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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

JESUS PARRA et al., Plaintiffs and Appellants, v. WESTERN GENERAL INSURANCE COMPANY, Defendant and Respondent.	B292113 (Ventura County Super. Ct. No. 56-2017-00496698 CU-IC-VTA)

APPEAL from a judgment of the Superior Court of Ventura County, Matthew P. Guasco, Judge. Reversed.

Ringler Law Corporation, Jerome L. Ringler; Law Offices of John F. Gerard, John F. Gerard; Esner, Chang, & Boyer and Stuart B. Esner for Plaintiffs and Appellants.

Horvitz & Levy, Andrea L. Russi, Mitchell C. Tilner; Baker, Keener & Nahra, Robert C. Baker, and Derrick S. Lowe for Defendant and Respondent.

INTRODUCTION

This case arises from a horrific accident during which Jeremy White, who was driving while intoxicated, crashed his truck into a parked car. The collision killed Andres Parra, who was inside the parked car, and permanently paralyzed California Highway Patrol officer Anthony Pedeferri, who was standing near the parked vehicle. After White pled guilty to vehicular manslaughter, Parra's parents Jesus and Dora Parra (Plaintiffs) made a pre-litigation offer to White's insurer, Western General Insurance Company (WGIC), to settle their wrongful death claims. Plaintiffs offered to compromise for $14,999, an amount within White's policy limits. WGIC rejected their offer. Plaintiffs then sued White. On July 13, 2012, Plaintiffs were awarded $3,566,597.74, plus interest. WGIC thereafter paid Plaintiffs White's policy limits, and a codefendant of White paid them according to its percentage of responsibility. Plaintiffs are still owed over $3 million from White.

On May 13, 2017, White assigned Plaintiffs all his assignable claims and contractual causes of action against WGIC. Plaintiffs then sued WGIC based on that assignment, alleging WGIC breached the implied covenant of good faith and fair dealing owed to White by rejecting Plaintiffs' reasonable settlement offer, which resulted in a judgment against White far in excess of policy limits.

WGIC moved for summary judgment, asserting that White's insurance policy required any claim for breach of contractual duties against WGIC be brought within one year, and Plaintiffs' suit was therefore untimely. Plaintiffs responded that WGIC was equitably estopped from making such an argument because WGIC failed to comply with California insurance

regulations requiring WGIC to notify White of the policy's limitations period provision, and White detrimentally relied on WGIC's silence in failing to take action sooner.

The trial court found Plaintiffs' claim against WGIC time-barred, and that Plaintiffs failed to present sufficient evidence of a triable issue of material fact as to equitable estoppel. For the reasons set forth below, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Accident

On December 19, 2007, Plaintiffs' son was inside a car parked along Pacific Coast Highway. Officer Pedeferri had pulled over Plaintiffs' son and was behind the parked car. White, who was intoxicated and speeding, veered his truck off onto the shoulder and hit the parked car, which caused it to burst into flames. Plaintiffs' son was killed, and Officer Pedefferi suffered life threatening injuries that resulted in complete paraplegia. White pled guilty to vehicular manslaughter while intoxicated and, on September 11, 2008, was sentenced to serve 15 years in state prison. (*People v. White* (October 29, 2009, B211875) [2009 Cal.App.Unpub. LEXIS 8625].)

B. White's Automobile Insurance Policy With WGIC

At the time of the accident, White had automobile insurance through WGIC. White's automobile insurance policy included liability coverage limits of $15,000 per person/$30,000 per accident and $5,000 for property damage. It provided that WGIC would "defend any claim or suit asking for these damages," and that WGIC would "pay all costs taxed against the insured in any suit defended by the Company and all interest on the entire

amount of any judgment which accrues after entry of judgment and before the Company has paid, tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability."

Part VI, section E of the policy states, in relevant part: "No claim shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company. . . . [¶] Any claim brought by an insured against the Company for breach of contract, breach of the covenant of good faith and fair dealing, or breach of statutory obligations, must be brought within one (1) year after the accrual of such claim."

Part VI, section J states: "Terms of this policy which are in conflict with the statutes of the State wherein this policy issued are hereby amended to conform to such statutes."

C. The Underlying Lawsuit Against White

On September 1, 2009, Plaintiffs offered to settle their wrongful death claim with WGIC for $14,999.00, an amount within White's policy limits. WGIC rejected the offer.[1]

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[1] In particular, WGIC responded that it would settle the wrongful death claim for $14,999.00 only if that settlement also covered Plaintiffs' property damage claims. When ruling on White's accord and satisfaction affirmative defense in Plaintiffs' case against White, the court ruled WGIC had effectively rejected Plaintiffs' offer. This ruling was not appealed. Accordingly, that WGIC's counteroffer constituted a rejection is not disputed.

After WGIC rejected their settlement offer, Plaintiffs filed an action against White and a codefendant, seeking damages for the wrongful death of their son.[2] WGIC provided counsel for White. On July 25, 2011, following a jury trial, judgment was entered against White. The judgment became final on July 13, 2012. Plaintiffs were awarded $3,566,597.74, including costs and attorneys' fees, plus 10 percent interest from October 5, 2010. WGIC paid Plaintiffs according to its policy limits—$15,000 for the wrongful death claim, $38,677.19 in costs, and $143,712.30 in interest. White's codefendant paid Plaintiffs $172,234.50, the amount it owed per its percentage of responsibility.[3] Although the exact amount is not calculable from the record before us, Plaintiffs are still owed in excess of $3 million plus interest.

D. White's Assignment of Rights to Plaintiffs

On March 18, 2013, Plaintiffs' counsel conducted a debtor's examination of White, who was then (and still is) incarcerated. White was represented at the examination by the same counsel, provided by WGIC, who represented him at trial. White's counsel also represented WGIC during the matter, as he was the WGIC attorney that rejected Plaintiffs' 2009 settlement offer.

During the debtor's examination, Plaintiffs' counsel asked White if he would be willing to assign Plaintiffs his rights to sue WGIC in exchange for a covenant not to execute on the judgment Plaintiffs had obtained against White. Defense counsel told

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[2] Pedeferri and his spouse were also plaintiffs. (*Pedeferri, et al. v. White, et al.*, Ventura Superior Court Case No: 56-2009-00357429-CU-PO-VTA.)

[3] It is unclear how much of this codefendant payment went towards principal, and how much towards interest.

White that he could not advise on whether or not to execute the assignment, presumably because of the conflict of interest that it would create with WGIC. White said he was open to Plaintiffs' idea, but that he would not sign any legal paperwork without advice from independent counsel.

White's family retained independent counsel for him in late April 2017. Shortly thereafter, on May 13, 2017, White assigned Plaintiffs all his assignable rights to bring an action against WGIC to seek recovery for the unsatisfied excess judgment. In return, Plaintiffs stipulated they would only look to satisfy their judgment against White from the assigned claims, and not White personally.

E. Plaintiffs' Lawsuit Against WGIC

On May 18, 2017, Plaintiffs initiated the current action, alleging WGIC breached the implied covenant of good faith and fair dealing in rejecting Plaintiffs' 2009 offer to settle within policy limits, despite WGIC having already determined that White was principally at fault (including WGIC being aware of White's 2008 conviction for vehicular manslaughter). Plaintiffs asserted this breach caused damage to White, by leading to a judgment against him far exceeding his insurance's policy limits. Plaintiffs claimed that WGIC was therefore responsible for satisfying the outstanding amount owed by White.

On April 2, 2018, WGIC moved for summary judgment. It asserted that Plaintiffs' claim was barred by the one-year contractual time limitation in the policy. WGIC argued the time limitation began to run on July 13, 2012, the date the judgment in the underlying matter became final, and accordingly the last

date on which White or his assignees could have filed suit was July 13, 2013.[4]

Plaintiffs responded that WGIC was equitably estopped from relying on the contractual limitations period because it did not provide written notice to White (apart from the policy packet itself) of the time limits in its policy, and that such notice was required by the Fair Claims Settlement Practices Regulations, California Code of Regulations, title 10, section 2695.4, subdivision (a).[5] Asserting White was not actually aware of the one-year contractual limitation and WGIC's failure to make the required notification was the reason for the delay in bringing suit, Plaintiffs asserted WGIC was estopped from asserting that one-year contractual limitation. In Plaintiffs' view, White had six years to bring his claim—the four years provided for an action upon a contract (Code Civ. Proc., § 337, subd. (a)), plus two years of tolling because White was imprisoned at the time the four-year statute of limitations would have otherwise accrued (Code Civ. Proc., § 352.1, subd. (a)). Plaintiffs argued that because White had six years to bring such a claim, so did Plaintiffs. (See *Essex Ins. Co. v. Five Star Dye House, Inc.* (2006) 38 Cal.4th 1252, 1264 [an assignee " 'stands in the shoes of his assignor, taking his rights and remedies' "].)

In support of their opposition, Plaintiffs submitted a declaration from their counsel, John F. Gerard. Gerard's

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[4] In its motion for summary judgment, WGIC claimed the accrual date was earlier, but later conceded the correct accrual date was July 13, 2012.

[5] All further unspecified section references are to title 10 of the California Code of Regulations.

declaration and the attachments to it put forth many of the facts stated above. These included Gerard asking White on March 18, 2013 whether White would be willing to assign Plaintiffs his rights so that Plaintiffs could sue WGIC on his behalf, White responding that he was open to the idea but first wanted to get the advice of independent counsel, White's family hiring independent counsel in the spring of 2017, and White subsequently assigning Plaintiffs his rights on May 13, 2017. Plaintiffs also submitted WGIC's admission in its discovery responses that between September 1, 2009 (the date of Plaintiffs' settlement offer) and May 18, 2017 (the date the Plaintiffs filed the current suit), WGIC never notified White of the one-year limitations period in the policy. Plaintiffs also submitted WGIC's acknowledgment in a verified document production response that WGIC had no record White was provided notification of the one-year contractual limitation period independent of the policy jacket.

At oral argument, the court asked if Plaintiffs had evidence that White in fact did not know of the one-year contractual limitations period. Plaintiffs' counsel told the court they did not yet have such evidence, because they were still trying to get White's deposition.

On May 18, 2018, the court granted WGIC's summary judgment motion. The court found the action was subject to the one-year contractual limitations period, and further that Code of Civil Procedure section 352.1, subdivision (a) provided two additional years of tolling because of White's incarceration, such that Plaintiffs had three years to file their complaint. The court found the action was brought beyond the three-year period, and that Plaintiffs did not meet their burden of demonstrating a

triable issue of fact that WGIC should be equitably estopped from relying on the contractual limitations period. In particular, the court held Plaintiffs failed to submit any evidence that White did not know about the contractual limitations period in his insurance policy, and that Plaintiffs had thus not met the elements of equitable estoppel requiring the party arguing for estoppel to be ignorant of the true facts, and to have relied on that ignorance to his injury.

F. The New Trial Motion

Plaintiffs timely moved to vacate the court's entry of summary judgment in favor of WGIC and for a new trial. The new trial motion attached a declaration from White stating that WGIC never told him about the contractual time restriction, that he had no actual knowledge of any such restriction in the policy, that he had been imprisoned at all times since Plaintiffs submitted their settlement offer to WGIC in September 2009, and that he did not have a copy of his insurance policy contract with him in state prison at any point.

The court denied the new trial motion, stating Plaintiffs were attempting "to re-litigate whether there was a material triable dispute concerning the application of equitable estoppel as a defense to the one-year contractual limitation period."

Plaintiffs timely appealed both the judgment entered against them and the order denying Plaintiffs' motion for new trial or, alternatively, to set aside and vacate judgment.

DISCUSSION

A. Applicable Legal Standards

1. Summary Judgment

"A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit . . . ." (Code Civ. Proc., § 437c, subd. (a)(1).) "A summary judgment is properly granted if there is no question of fact and the issues raised by the pleadings may be decided as a matter of law." (*Spray, Gould & Bowers v. Associated Internat. Ins. Co.* (1999) 71 Cal.App.4th 1260, 1266 (*Spray*); see also Code Civ. Proc., § 437c, subd. (c).)

The party moving for summary judgment has the initial burden to show there are no triable issues of material fact. (*Spray*, *supra*, 71 Cal.App.4th at p. 1266.) If a defendant moves for summary judgment based upon the assertion of an affirmative defense such as the statute of limitations, the party meets its burden if it shows " 'that there is a complete defense to that cause of action.' [Citation.] The burden then shifts to the plaintiff to show the existence of a triable issue of fact." (*Ibid.*; see also Code Civ. Proc., § 437c, subd. (p)(2).)

"We review the trial court's [summary judgment] ruling de novo, liberally construe the evidence in favor of the opposing party, and resolve all doubts concerning the evidence in favor of the opposing party." (*Superior Dispatch, Inc. v. Insurance Corp. of New York* (2010) 181 Cal.App.4th 175, 186 (*Superior Dispatch*).)

2. Equitable Estoppel

"A defendant may be equitably estopped from asserting a statutory or contractual limitations period as a defense if the defendant's act or omission caused the plaintiff to refrain from filing a timely suit and the plaintiff's reliance on the defendant's conduct was reasonable." (*Superior Dispatch*, *supra*, 181 Cal.App.4th at p. 186.) " ' "Four elements must ordinarily be proved to establish an equitable estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and, (4) he must rely upon the conduct to his injury." ' [Citation.]" (*Spray*, *supra*, 71 Cal.App.4th at p. 1268.)

At the summary judgment stage, unless the record affirmatively shows a basis for estoppel, the party asserting equitable estoppel has the burden of showing there is a triable issue of material fact as to an element of equitable estoppel. (See *Busching v. Superior Court* (1974) 12 Cal.3d 44, 53; see also *Oldcastle Precast, Inc. v. Lumbermens Mutual Casualty Co.* (2009) 170 Cal.App.4th 554, 572.) "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." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).)

3. Fair Claims Settlement Practices Regulations

The Fair Claims Settlement Practices Regulations, "enacted by the Department of Insurance[,] require certain disclosures by insurers in connection with claims presented." (*Superior Dispatch, supra*, 181 Cal.App.4th at p. 188.) Section 2695.4, subdivision (a) states, in relevant part: "Every insurer shall disclose to a first party claimant or beneficiary, all benefits, coverage, time limits or other provisions of any insurance policy issued by that insurer that may apply to the claim presented by the claimant." (Subd. (a).) "First party claimant" is defined by the regulations as "any person asserting a right under an insurance policy as a named insured, other insured, or beneficiary under the terms of that insurance policy . . . ." (§ 2695.2, subd. (f).)

Section 2695.7, subdivision (f), states in pertinent part: "Except where a claim has been settled by payment, every insurer shall provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim. Such notice shall be given to the claimant not less than sixty (60) days prior to the expiration date; except, if notice of claim is first received by the insurer within that sixty days, then notice of the expiration date must be given to the claimant immediately. . . . This subsection shall not apply to a claimant represented by counsel on the claim matter." (§ 2695.7, subd. (f).) The regulation's reference requiring written notice of "any statute of limitation or other time period requirement" includes contractual limitations periods. (*Superior Dispatch*, *supra*, 181 Cal.App.4th at pp. 188–189.)

B. WGIC Met Its Initial Burden In Moving For Summary Judgment

1. WGIC Did Not Waive Its Limitations Defense

Plaintiffs initially argue WGIC waived the contractual limitations period by not pleading it with the requisite specificity in WGIC's answer. WGIC's answer did not mention the contractual limitations period in the insurance policy, saying only: "As and for a second affirmative defense, this answering Defendant alleges that Plaintiffs' Complaint on file herein, and the whole thereof, and each and every purported cause of action contained therein is barred by the running of the statute of limitations as set forth in the California Code of Civil Procedure, including, but not limited to, sections 335.1, 337, and 339."

"The general rule is firmly established that if a statute of limitation is not pleaded it is waived." (*Hall v. Chamberlain* (1948) 31 Cal.2d 673, 679.) To avoid surprise or unfair advantage, a defendant must specify the particular statutory section or subdivision that allegedly time bars the claim. (Code Civ. Proc., § 458; *Brown v. World Church* (1969) 272 Cal.App.2d 684, 691.) Failure to do so may waive the defense. (*Martin v. Van Bergen* (2012) 209 Cal.App.4th 84, 91.) Plaintiffs argue that, by parity of reasoning, WGIC's answer was required to reference the particular contractual provision on which WGIC relied.

Regardless of whether WGIC was required to set forth the contractual term in its answer, in litigating the summary judgment motion, Plaintiffs never objected that WGIC had waived its contractual limitations defense by failing to specify it in the answer. Instead, the parties fully litigated the motion with no suggestion Plaintiffs were surprised or prejudiced by WGIC's

limitations argument, or that WGIC's reliance upon the contractual limitation term was improper. Indeed, Plaintiffs' counsel told the trial court he assumed "WGI[C]'s affirmative statute of limitations defense in its Answer was broad enough to have encompassed the contractual time limit raised in their motion," and that he failed to notice WGIC's answer did not explicitly plead the contractual time basis for barring Plaintiffs' lawsuit until after the court granted WGIC's motion for summary judgment.

Where a party claiming waiver "responded to the summary judgment motion on the merits, never claiming [the defendant]'s answer was defective or insufficient to support the summary judgment motion[,] . . . . 'it would be unfair to ground a ruling on the inadequacy of the pleadings *if* the pleadings, read in the light of facts adduced in the summary judgment proceeding, give notice to the plaintiffs of a potentially meritorious defense.' [Citation.] " (*Jones v. Dutra Construction Co.* (1997) 57 Cal.App.4th 871, 876.) The facts here show Plaintiffs "obviously had notice of the defense upon which [WGIC] was relying," as they fully litigated that defense, and Plaintiffs therefore waived any right to claim on appeal that the answer was defective by litigating the merits of the summary judgment motion without objection. (*Id*. at p. 877; see also *Choi v. Sagemark Consulting* (2017) 18 Cal.App.5th 308, 322, fn.7 [plaintiff's failure to object to trial court's consideration of limitations defense at summary judgment that was not specifically listed in answer waived claim of error on appeal].)

2. WGIC Met Its Initial Burden

WGIC met its initial burden of showing Plaintiffs' claims were time-barred by producing the one-year contractual limitations provision in its policy with White, and by pointing to the fact that Plaintiffs filed suit on May 18, 2017.[6]

Plaintiffs argue section 2695.4, subdivision (a) imposed a further requirement on WGIC to demonstrate, as part of its initial burden, that it notified White of the contractual limitations period or alternatively was excused from doing so. WGIC claims Plaintiffs waived this argument by failing to raise it below, and that the argument is in any event meritless. We need not address these competing arguments, because as we discuss next, Plaintiffs put forward sufficient circumstantial evidence to raise a triable issue of fact as to equitable estoppel. (See *Spray*, *supra*, 71 Cal.App.4th at p. 1273, fn. 11 [declining to reach question of whether Fair Claims Settlement Practices Regulations were incorporated into insurance policy because equitable estoppel otherwise established].)

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[6] Plaintiffs claim that the one-year contractual limitation is inherently unreasonable and thus unenforceable. Plaintiffs ignore ample precedent that "California courts routinely have enforced contractual provisions shortening the four-year statute of limitations for breach of a written contract to periods of one year or less." (*Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 76.) This includes one-year limitations in insurance contracts. (*Spray*, *supra*, 71 Cal.App.4th at p. 1267.)

C. There Was a Triable Issue of Material Fact as to Whether WGIC Was Equitably Estopped from Relying on the Contractual Limitations Provision

1. Section 2695.4, Subdivision (a) Applies

WGIC initially questions whether an equitable estoppel defense is legally available. Plaintiffs' equitable estoppel claim is based on WGIC's noncompliance with section 2695.4, subdivision (a). WGIC argues this subdivision applies only when an insurance company denies an insured's claim.[7] WGIC argues it did not deny Plaintiffs' claim but merely rejected a settlement offer, and therefore the regulation on which Plaintiffs base their equitable estoppel claim is inapplicable to WGIC's conduct.

We disagree. While WGIC notes that prior cases interpreting section 2695.4 involved fact patterns in which the insurer had denied the claims at issue, there is nothing in the language or rationale of section 2695.4, subdivision (a) that justifies limiting its reach only to situations where a claim is

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[7] Although Plaintiffs assert that WGIC waived this argument by failing to raise it below, "[a] party may raise a new issue on appeal if that issue is purely a question of law on undisputed facts." (*Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal.App.4th 1133, 1141.) It is well established that " '[t]he interpretation of a statute . . . is a question of law, and we are not bound by the evidence presented [on such] a question in the trial court.' " (*Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 905.) Although section 2695.4, subdivision (a) is a regulation and not a statute, " '[r]ules governing the interpretation of statutes . . . apply to the interpretation of regulations.' " (*De La Torre v. California Horse Racing Board* (2017) 7 Cal.App.5th 1058, 1066.)

denied. Section 2695.4, subdivision (a) provides that "[e]very insurer shall disclose to the first party claimant . . . all . . . time limits . . . of any insurance policy issued by that insurer that may apply to the claim presented by the claimant." Nothing in the language of the regulation limits the obligation of disclosure to situations where a claim is denied. Rather, section 2695.4, subdivision (a) "require[s] insurers to disclose to insureds time limits which apply to submitted claims." (*Spray*, *supra*, 71 Cal.App.4th at pp. 1264—1265; see also *Superior Dispatch*, 181 Cal.App.4th at p. 190 ["Section 2695.4, subdivision (a) requires an insurer to disclose to its insured claimant any contractual limitations provision, and other policy provisions, that may apply to the claim."].) It "imposes on insurers an unmistakable duty to advise its claimant insureds of applicable claim time limits. . . . The regulation's purpose is salutary, designed to alert insureds to their insurance policy obligations, and to foster equity, fairness, and plain-dealing in claims handling." (*Spray*, supra, 71 Cal.App.4th at p. 1269.) The duty to notify is "to assure *actual*, not merely constructive, knowledge of the contractual limitations period within which suit must be brought by an insured[, since] [t]o permit an insurer to enforce a time limit provision based solely on evidence of constructive notice would eviscerate the purpose of the regulation." (*Id*. at pp. 1272—1273.)

Section 2695.7, subdivision (f), which provides that "[e]xcept where a claim has been settled by payment, every insurer shall provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim," does not change this analysis. Section 2695.7, subdivision (f) states that it does "not apply to a claimant represented by counsel on the claim matter," and White was

represented in the time leading up to the expiration of the contractual limitations period.

Even if White was unrepresented during any of the pertinent timeframe, the *Superior Dispatch* court explained section 2695.7 overlaps, but does not overrule, section 2695.4: "Section 2695.4, subdivision (a) applies to contractual limitations provisions and other policy provisions that may apply to the claim and applies only to first party claimants. Section 2695.7, subdivision (f), in contrast, applies to statutes of limitations and any 'other time period requirement upon which the insurer may rely to deny a claim,' and applies to first party and third party claimants. Thus, the two regulations differ in scope. Although there is some overlap in that both regulations require an insurer to notify a first party claimant of contractual limitations provisions, this apparent redundancy does not indicate that either regulation was intended to supplant the other. Moreover, there is no conflict. An insurer can comply with both notice requirements with respect to contractual limitations provisions by timely providing written notice of those provisions." (*Superior Dispatch*, *supra*, 181 Cal.App.4th at pp. 189—190.)

When an insurer settles a claim by payment, section 2695.7, subdivision (f) stands for the common-sense proposition that notification of time limits to dispute the insurer's actions are unnecessary because no dispute remains. (See, e.g., *SEMX Corp v. Federal Ins. Co.* (S.D. Cal. 2005) 398 F.Supp.2d 1103, 1112 [section "2695.7 specifically addresses the instance of settlement of a claim," and therefore in case where insurer settled claim by payment "trumps the broader [notification] language contained in section 2695.4"].) Although WGIC did not deny Plaintiffs' claim against White, it never settled that claim. Instead, WGIC

rejected Plaintiffs' settlement offer of $14,999.00, and, as a result, Plaintiffs sued White and the case was tried. At the conclusion of the case, Plaintiffs were awarded $3,566,597.74, and WGIC paid Plaintiffs according to its policy limits without any release or other indicia of settlement.

WGIC's argument that section 2695.4, subdivision (a) applies only when a claim is denied would appear to lead to unsound results. Plaintiffs submitted evidence they put WGIC on notice that a claim for breach of the implied covenant would be pursued following the rejection of their settlement offer, during the underlying litigation, and following entry of judgment. WGIC also knew, months before the expiration of the time limit in the policy, that White was considering assigning his contractual claims against it. WGIC argues it did not need to provide notice to White under section 2695.4, subdivision (a) because did not deny the claim, while at the same time insisting it can assert the contractual time limitation to deny liability without ever having provided White the required notice of the deadline before it expired. The regulation was designed "to alert insureds to their insurance policy obligations, and to foster equity, fairness, and plain-dealing in claims handling." (*Spray*, *supra*, 71 Cal.App.4th at p. 1269.) WGIC's proffered interpretation would read section 2695.4, subdivision (a) to permit exactly the opposite.

2. There Was Sufficient Circumstantial Evidence to Create a Triable Issue of Material Fact

Given that section 2695.4, subdivision (a) imposed a duty on WGIC to notify White of the contractual limitations period, we now turn to whether Plaintiffs raised a triable issue of material fact as to whether WGIC should be estopped from relying on it.

Plaintiffs' showing required evidence on four issues: (1) WGIC's knowledge of pertinent facts; (2) WGIC's intent that its conduct be acted upon, or evidence that White had the right to believe WGIC's actions were so intended; (3) White's ignorance of the true state of facts; and, (4) White's reliance upon WGIC's conduct to his injury. (*Spray*, *supra*, 71 Cal.App.4th at p. 1268.) Although "we do not draw inferences from thin air," "a party may rely on reasonable inferences drawn from direct and circumstantial evidence to satisfy its burden on summary judgment." (*Collin v CalPortland Co.* (2014) 228 Cal.App.4th 582, 592.)

(a) WGIC Did Not Notify White of the Contractual Limitations Period

WGIC knew of the one-year contractual limitations provision in its own insurance policy, and it knew or should have known of the insurance regulations mandating it to notify White of those time limits. (*Maxim Crane Works, L.P. v. Tilbury Constructors* (2012) 8 Cal.App.4th 286, 294 [company doing business in a state is presumed to know the laws of the state].) It was undisputed that WGIC did not notify White of the contractual limitations provision between September 1, 2009 and May 18, 2017, and further that WGIC had no record of informing White of the limitations provision at any other time. Plaintiffs therefore introduced sufficient evidence to establish a triable issue of material fact on the first prong of equitable estoppel.

(b) WGIC's Intent

Plaintiffs also established a triable issue of material fact on the second element of equitable estoppel—that WGIC intended its failure to notify White would be acted upon. This element

does not require proof of fraud or intentional deceit. (*Superior Dispatch*, *supra*, 181 Cal.App.4th at p. 187 [estoppel may arise although there was no designed fraud on the part of the person sought to be estopped]; *Lantzy v. Certex Homes* (2003) 31 Cal.4th 363, 384 [defendant need not have intentionally deceived the plaintiff to give rise to equitable estoppel].)

WGIC had a duty to notify White about the limitation period. The fact that it did not do so leads to a reasonable inference WGIC intended White to rely on WGIC's silence in the hope he would not file a suit within the prescribed time period. This reasonable inference is bolstered by evidence that in March 2013, four months before the contractual limitations period would have expired, Plaintiffs' counsel asked White to assign Plaintiffs his right to file a claim against WGIC, and White said he was open the idea. While WGIC's counsel told White that he could not advise him one way or the other on assigning his rights, WGIC was undoubtedly on notice at that point its insured was interested in assignment to get out from under the over $3 million remaining on the judgment against him. WGIC nevertheless continued to disregard its legal obligation to inform White of the limitations period, leading to the reasonable inference WGIC intended through its failure to notify White to lull him from taking action before the limitations period expired.

(c) White's Lack of Knowledge and Detrimental Reliance

The third and fourth elements of equitable estoppel—that White did not know about the contractual limitations period, and detrimentally relied on that lack of knowledge—are the elements the trial court found Plaintiffs did not meet. The trial court

based its finding on the fact that Plaintiffs submitted no direct testimony from White that he was unaware of the limitations period, or that he detrimentally relied.[8]

Although such direct evidence would have been preferable, we do not believe it was required here. "That which does not appear to exist is to be regarded as if it did not exist." (Civ. Code, § 3530.) The purpose of section 2695.4, subdivision (a) is "to assure *actual*, not merely constructive, knowledge, of the contractual limitations period . . . ." (*Spray*, supra, 71 Cal.App.4th at pp. 1272—1273.) We therefore do not start from the assumption that White had actual knowledge, but rather look at the evidence before the court to determine if a fact-finder could reasonable infer that he did not.

Drawing all reasonable inferences in Plaintiffs' favor, we agree with Plaintiffs that they presented sufficient circumstantial evidence to infer White did not actually know the contractual limitations period and acted in reliance on that ignorance.[9] White had a significant substance abuse problem

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[8] As noted above, Plaintiffs did not submit a declaration from White until the new trial motion. The trial court also relied on the fact Plaintiffs did not submit a declaration attesting to their ignorance of the limitations provision, but the parties agree, as do we, that it is White's knowledge that matters.

[9] While it does not claim waiver, WGIC does note that Plaintiffs did not argue to the trial court there was sufficient circumstantial evidence to create a triable issue of material fact. " 'On review of an order granting or denying summary judgment, we examine the facts presented to the trial court and determine their effect as a matter of law.' [Citation.] We review the entire record, 'considering all the evidence set forth in the moving and

that began when he was 17 and continued through the time of the accident. White was arrested after the accident and then imprisoned, and no evidence suggested someone had provided him a copy of the policy while he was in jail, much less highlighted the existence of the limitations provision. The most likely individual to have done so was his lawyer, who had a duty of loyalty to WGIC. Given that this same lawyer expressly refused to advise on any issues related to claims against WGIC, it is a reasonable inference he did not call the limitations provision to White's attention.

Plaintiffs' counsel asked White in March 2013, four months before the contractual limitations period would have run out, whether he would be willing to assign his rights in return for an agreement Plaintiffs would not continue to pursue him for the over $3 million left unsatisfied under the judgment. There is no evidence during that during the discussion White manifested an understanding of the limitations provision, nor did either lawyer inform him about it. White responded he was open to the idea of assignment, but that he wanted to get the advice of independent counsel before signing any legal documents.

It is reasonable to infer that had White actually been aware of the limitation provision, he would not have waited until late spring 2017 to retain counsel and assign his rights to Plaintiffs. After all, White was effectively being offered over $3 million in

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opposition papers except that to which objections have been made and sustained.' [Citation.]" (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618.) Accordingly, we decide whether there was a triable issue of material fact by independently reviewing the facts presented to the trial court. (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1196.)

debt relief for the assignment. If he was actually aware of the limitations provision, there would be no reason to delay assignment, and thereby impair both the assignment's value and the possibility Plaintiffs would still accept the assignment. This inference is corroborated by the fact that once White got independent counsel, and that counsel discussed the policy with him, he assigned his rights essentially forthwith. (See *Superior Dispatch*, *supra*, 181 Cal.Ap.4th at pp. 187-188 [scope and timing of representation by counsel is relevant to question of detrimental reliance].)

We agree with WGIC that one can draw opposite inferences from this circumstantial evidence. But when the inferences to be drawn from the evidence are ambiguous, summary judgment is not appropriate. (*Aguilar*, *supra*, 25 Cal.4th at p. 856; see also Code Civ. Proc. § 437c, subd. (c) ["summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences . . . [that] raise a triable issue as to any material fact"].)[10]

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10 Because we find triable issues of fact necessitating reversal, we need not reach Plaintiffs' argument that the trial court erred in denying their motion for a new trial.

DISPOSITION

The judgment is reversed, and the matter remanded for further proceedings consistent with this opinion. Plaintiffs are to recover their costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

CHANEY, Acting P. J.

BENDIX, J.

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