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How to deal with equitable tolling in the context of property-damage claims

When tolling ends after a claim denial and when it may resume if an insurer reopens an investigation

BY NATALIE H. SURI

In the wake of the devastating wildfires in Los Angeles County, a surge of property-damage claims is inevitable. Attorneys, eager to help friends and family, may step into this space, even if it's uncharted territory for them. But before diving in, it's crucial to understand the complexities of property damage claims to avoid unintentionally causing further harm to those who have already suffered significant losses. This article will specifically focus on navigating the statute of limitations.

Unlike most tort and contract matters, these claims don't follow a

simple "date of loss plus one year" formula. Instead, they're clouded by equitable tolling periods, which are anything but straightforward. The Ninth Circuit is set to weigh in on these ambiguities in an appeal we've filed, offering hope for clarity. Until then, understanding the nuances of this complex area of law is not just helpful – it is essential.

Equitable tolling in a nutshell

Equitable tolling plays a critical role in property damage claims, particularly when it comes to insurance policies with a one-year statute provision. In *Prudential-LMI Com. Insurance v. Superior Court*

(1990) 51 Cal.3d 674, the California Supreme Court clarified how this doctrine operates. The court held that equitable tolling effectively pauses the statutory one-year limitation period in insurance contracts. Specifically, the clock is tolled from the moment the insured files a notice of claim until the insurer formally denies the claim. (*Id.* at 678.) This approach ensures that policyholders are not unfairly penalized while awaiting the outcome of the claims process.

If you're reading this article, you probably already know that insurance companies are not in the business of paying out – they are in the business of



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collecting premiums. While hopeful policyholders may trust that their insurance companies will stand by them during this time – especially after years of paying premiums and hearing reassuring public promises – you, as an attorney, wouldn't be surprised when that denial letter arrives. But here's the question we pose to the Ninth Circuit and, if needed, the Supreme Court: What happens if the insurance company begins to reconsider the claim after issuing that denial?

Though case law may seem clear, it remains a gray area because judges are conflicted on what precedent to apply. It is critical to understand that there is no bright-line rule – *at least not yet* – so we must proceed with caution to avoid inadvertently stripping our clients of their day in court.

There are three pivotal cases that require careful review for those planning to take on these matters: *Singh v. Allstate Ins. Co.* (1998) 63 Cal.App.4th 135 (“*Singh*”), *Ashou v. Liberty Mutual Fire Ins. Co.* (2006) 138 Cal.App.4th 748 (“*Ashou*”), and the California Supreme Court's decision in *Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674 (“*Prudential*”). This article will focus on the first two cases while incorporating discussions of *Prudential* throughout.

Understanding *Singh*

In *Singh*, the California Court of Appeal addressed whether a request for reconsideration after a claim's denial could reopen the tolling period under equitable principles. (*Singh v. Allstate Ins. Co.* (1998) 63 Cal.App.4th 135.) The insureds filed a timely claim for fire damage, which the insurer investigated and denied on November 9, 1994, citing breaches of policy conditions, including failure to secure the property after prior losses. On February 21, 1995, the insureds requested reconsideration, indicating they did not wish to litigate. In response, the insurer promised to review the matter but reaffirmed its

denial in a letter dated March 22, 1995. The insureds then filed suit on December 5, 1995, missing the one-year limitations period by less than one month.

The court's analysis hinged on the unequivocal nature of the insurer's initial denial. It held that the policies underlying equitable tolling – prompt notice to the insurer, allowing sufficient time for investigation, and preserving the insurer's ability to defend – had already been fulfilled during the initial claim process. (*Id.* at 142.) The insureds were aware of their right to sue upon receiving the original denial, and the subsequent request for reconsideration did not negate the finality of that decision. The court concluded that an unequivocal denial marks the point at which equitable tolling ceases to apply, as the insured has all necessary information to pursue litigation. (*Id.* at 148.)

The court also expressed concern that permitting equitable tolling based solely on reconsideration requests would undermine the purpose of statutory deadlines. Allowing a new tolling period for each request could lead to indefinite extensions of the limitations period, creating uncertainty and discouraging insurers from granting reconsideration in good faith. The *Singh* court emphasized that doctrines of waiver or estoppel could still apply in cases where an insurer's conduct actively induced the insured to delay filing suit. However, no such conduct was present in *Singh*, as the insurer consistently maintained its original denial and did not take any affirmative steps that could mislead the insured.

The court further underscored that equitable tolling is unnecessary when the insured already knows the basis of the denial and the statute of limitations. The insureds in *Singh* were fully aware of the denial and the timeline for filing suit, but failed to act within the remaining one-year period after the denial. The insurer's reconsideration was simply a courtesy and did not re-engage the tolling period. By emphasizing the importance

of an unequivocal denial as the definitive demarcation point for limitations purposes, the *Singh* court established a rule regarding the effect of such denials. However, it left an important question unaddressed: What happens in cases where a request for reconsideration is agreed to – whether through an explicit agreement or through the conduct of the insurer? This issue was subsequently analyzed and clarified in *Ashou*.

Understanding *Ashou*

In *Ashou*, the California Court of Appeal addressed the application of equitable tolling to a one-year statutory limitations period under Code of Civil Procedure section 340.9. (*Ashou v. Liberty Mutual Fire Insurance Co.* (2006) 138 Cal.App.4th 748.) This statute was enacted specifically to address widespread mishandling of insurance claims arising from the 1994 Northridge earthquake. It revived certain time-barred claims and granted policyholders a one-year window, beginning January 1, 2001, to file lawsuits for unresolved or under-adjusted earthquake-related claims. The legislative intent behind section 340.9 was to provide relief to insureds who had been misled or inadequately compensated by insurers after the earthquake, effectively granting them “a second-bite at the one-year apple.” However, while the statute reopened the filing period for these claims, it did not eliminate the possibility of equitable tolling during the one-year period when insurers engaged in reconsideration or investigation of previously settled claims.

Raymonda Ashou's property damage claim arose from the 1994 Northridge earthquake. Liberty Mutual initially settled her claim for \$52,000 in 1994, but Ashou later alleged that the settlement was insufficient to cover her losses. Following the enactment of section 340.9, Ashou sought reconsideration of her claim within the statutory one-year window. Liberty Mutual agreed to reopen the claim and



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conducted a new investigation, actively engaging with Ashou's counsel during this process. However, Liberty Mutual expressly reserved its right to assert defenses, including the statute of limitations. Despite the insurer's actions, Ashou did not file suit within the one-year statutory period provided by section 340.9. Liberty Mutual denied her claim in 2003, prompting Ashou to file an action for bad faith and breach of contract.

The appellate court held that equitable tolling principles from *Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674, applied to Ashou's case, reasoning that the one-year limitations period under section 340.9 did not preclude tolling when the insurer reopened and investigated a claim.

In *Prudential*, the California Supreme Court held that the one-year limitations period in standard fire insurance policies is tolled while the insurer investigates a timely submitted claim, as this serves the dual purposes of ensuring a thorough investigation and avoiding procedural unfairness. Extending this principle to section 340.9, the court in *Ashou* found that tolling applied because Liberty Mutual's decision to reopen the claim gave Ashou a reasonable expectation that her claim was under active reconsideration, thereby temporarily suspending the running of the limitations period. (*Ashou*, *supra*, 138 Cal.App.4th at pp. 756-757, 762-763.)

The *Ashou* court examined the five key policy considerations for equitable tolling outlined in *Prudential*: (1) allowing the claims process to function without forcing the insured to litigate prematurely, (2) protecting the insured's reasonable expectations that the claim is being reconsidered in good faith, (3) encouraging settlement over unnecessary litigation, (4) upholding the requirement for timely notice while penalizing undue delay, and (5) preventing claims from becoming time-barred before insurers have issued final decisions on reconsideration. (*Ashou*,

supra, 138 Cal.App.4th at pp. 763-64.) The court emphasized that these policies support applying equitable tolling when the insurer agrees to reopen the claim. However, it was clarified that a mere request does not automatically reopen the claim, nor does it impose an obligation on the insurer to respond.

Importantly, the court distinguished *Ashou* from *Singh*, where the insured's mere request for reconsideration was denied without any further investigation or deviation from the original denial. In *Singh*, the insurer's unequivocal denial, both initially and in response to the reconsideration request, was deemed to conclusively terminate the tolling period, as the insured had clear notice of the denial and sufficient grounds to file suit. In contrast, when an insurer either agrees to reconsider a claim explicitly or engages in conduct that reasonably leads the insured to believe the claim is being actively reviewed, as in *Ashou*, the situation changes.

Reopening a claim and conducting a new investigation effectively signals to the insured that the tolling principles outlined in *Prudential* are being invoked, as the insurer is again engaging in the claims process. Equitable tolling should apply under these circumstances because it prevents procedural unfairness to the insured, encourages insurers to investigate claims thoroughly without fear of indefinite liability, and aligns with the legislative purpose of section 340.9 to provide relief to claimants whose claims were mishandled. (*Ashou*, *supra*, 138 Cal.App.4th at pp. 756-757.)

Ultimately, while *Singh* remains authoritative for cases where no further action is taken by the insurer beyond denying a reconsideration request, it does not preclude tolling where an insurer's conduct reasonably leads the insured to believe the claim is being reexamined. By reopening the claim and conducting an additional investigation, Liberty Mutual created circumstances distinct

from *Singh*, warranting the application of a second period of equitable tolling.

Which authority controls?

The *Ashou* case, while arising in the context of claims brought under Code of Civil Procedure section 340.9 for Northridge earthquake victims, appears to have implications that extend beyond such cases. It suggests a potential exception to the standards established in *Singh*, as indicated by the court's detailed analysis and reasoning. The critical issue in *Ashou* was not the extension of the one-year statutory period specific to earthquake-related claims but rather the application of equitable tolling principles when an insurer agrees to reconsider or reinvestigate a claim. The court's emphasis on the tolling period indicates that its reasoning could have relevance beyond the earthquake context, potentially applying whenever an insurer's conduct reasonably leads an insured to believe their claim remains open and under active review.

That said, while *Ashou* and *Singh* address different scenarios, it is important to acknowledge that some courts have been hesitant to extend the principles of *Ashou* beyond its specific context. As the district court in our case noted, "*Ashou* was focused on specific Northridge issues." Until there is a definitive ruling on the broader applicability of *Ashou*, it is prudent to err on the side of caution and adhere to the equitable tolling principles established in *Singh* – regardless of whether the circumstances in your case align with those in *Ashou*.

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