Great American Ins. Co. v. Marian Regional Medical Center et al. Case No. 20CV02055
Hearing Date: October 24, 2023
Motions: Summary Judgment

Recommended Tentative

The Underlying *Velazquez* Litigation

On July 9, 2018, Adriana Velazquez was injured in a car accident in which a vehicle driven by Lidia Bibiano stuck the vehicle Ms. Velazquez was driving. Ms. Velazquez was admitted to Marian Medical Center. Ms. Velazquez became unresponsive in the morning hours of July 10, 2018. A CT angiography (CTA) was performed which caused the doctors to be concerned for cerebrovascular dissection/occlusion. Due to the concern of dissection, it was ordered that Ms. Velazquez be transferred to a higher level of care at Cottage Hospital. On July 10, 2018, at around 6:00 p.m., Ms. Velazquez was admitted to Cottage Hospital, where another CTA of the head and neck was performed and showed "complete occlusion of the basilar trunk except for the top of the basilar artery region." On the evening of July 10, 2018, an emergency procedure was performed to remove the clot, however, after the procedure Ms. Velazquez was diagnosed with brainstem stroke syndrome. She was able to communicate with eye blinks but had no motor function on command to all her extremities. Ms. Velazquez remained "locked in" during her twenty (20) day treatment period at Cottage Hospital. Ms. Velazquez will never again walk or sit up under her own power.

On July 19, 2018, Adriana Velazquez and Miguel Velazquez (Underlying Plaintiffs or Velazquezes) sued Corazon Del Campo, LLC, Lidia Bibiano, and Santa Maria Farms for motor vehicle negligence, general negligence, negligence per se, and loss of consortium. (Case No. 18CV03707, Judge Beebe.) Chubb Insurance Co., Everest Insurance Co. ("Everest"), and Great American Ins. Co. ("GAIC") provided defenses for their respective insured. On April 24, 2019, the Velazquezes resolved their claims for $20 million dollars. Pursuant to the terms of the comprehensive release negotiated between the parties, Chubb paid $3 million dollars, Everest paid $7 million dollars, and GAIC paid $10 million dollars on behalf of their insureds.

The Instant Subrogation Litigation

On June 11, 2020, Everest, GAIC, and Chubb Ins. Co. (plaintiffs or plaintiff insurers) filed this action for: (1) equitable subrogation, (2) equitable indemnity, and (3) declaratory relief against Marian Regional Medical Center, Santa Barbara Cottage Hospital, Thomas Church, MD, Victor Pulido, DO, Nicholas Slimack, MD, and Brian Fields, MD. Dignity Health was added as Doe 1 and Cottage Health was added as Doe 2on July 24, 2020. (Cottage Hospital and Cottage Health together are

referred to as "Cottage.") On May 14, 2021, Chubb Insurance Company filed a dismissal of its claims in this action.

On May 15, 2023, the second cause of action for equitable indemnity was dismissed. On June 12, 2023, the court dismissed the third cause of action for declaratory relief. Thus, the first cause of action for equitable subrogation is the sole remaining cause of action.

Procedural History Relevant to This Motion

Dignity Health (dba Marian Regional Medical Center) and Victor Pulido, DO (together, Dignity Health) filed a motion for summary judgment/adjudication of issues that was originally heard on November 1, 2022. That motion raised the issue (identified in the motion as Issue 1) whether the first cause of action for subrogation was barred by the statute of limitations applicable to medical malpractice claims in Code of Civil Procedure section 340.5. After hearing oral argument over several court sessions, on May 15, 2023, the court adopted its tentative ruling and ruled that the first cause of action for subrogation was not based on medical malpractice, rather it was based on a theory of equitable indemnification. The ruling expressly stated: "Dignity Health and Dr. Pulido are permitted to file a refocused motion if they see the benefit of doing so." (May 15, 2023 Minute Order.)

On June 8, 2023, plaintiff insurers filed their own motion for summary judgment to dispose of Defendants' affirmative defenses of statute of limitations and for an order that as a matter of law the two-year statute of limitations for equitable indemnity set forth in Code of Civil Procedure §335.1 applies in this case.

On June 29, 2023, Dignity Health filed a subsequent motion for summary judgment on the basis that plaintiffs cannot pursue equitable claims for subrogation based on medical malpractice because the cause of action is barred by the statute of limitations contained in Code Civil Procedure section 340.5. Cottage filed a joinder and separate statement on July 3, 2023.

On Calendar

1. Motion for Summary Adjudication re Statute of Limitations filed on June 8, 2023 by Great American Insurance Company and Everest National Insurance Company
    - Opposition by Dignity Health filed September 5, 2023
    - Joinder in Opposition by Santa Barbara Cottage Hospital and Cottage Health filed September 5, 2023 and responsive separate statement filed September 6, 2023 (together, Cottage)
    - Opposition by Dr. Oh filed September 5, 2023
    - Joinder in Opposition by Dr. Oh filed September 5, 2023

- Reply filed September 14, 2023

2. Motion for Summary Judgment re Statute of Limitations filed on June 29, 2023 by defendants Dignity Health
    - Joinder and Separate Statement by Cottage filed on July 3, 2023
    - Opposition to motion filed by plaintiff insurers on September 5, 2023
    - Reply filed September 14, 2023

Summary Judgment/Adjudication Standards

A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. (Code Civ. Proc., § 437c, subd. (f)(1).)

The defendant moving for summary judgment/adjudication has the burden of persuasion that "one or more elements" of the "cause of action cannot be established" or that there is a "complete defense," and the burden of production to make a prima facie showing of no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal 4th 826, 850.) Once the defendant has met this burden, the burden shifts to plaintiff to show that a triable issue of material fact exists as to that cause of action or defense. (Code Civ. Proc., § 437c subd. (p)(2).)

Here, insurers move for summary adjudication of the defense of statute of limitations asserted by Dignity Health, Cottage, and Oh as follows:

- Dignity Health: "These answering defendants assert, as an additional affirmative defense, the provisions of Code of Civil Procedure sections 340.5, 364 and 474." (Answer filed December 3, 2020, Eighth Affirmative Defense);
- Cottage: "The Complaint, and each of the purported causes of action contained in it, is barred by the running of the statute of limitations as embodied in the California Code of Civil Procedure, §§ 340.5. and 3483." (Answer filed October 15, 2020, Third Affirmative Defense.)
- Oh: "FOR A FIFTH FURTHER, SEPARATE AND DISTINCT DEFENSE, this answering defendant alleges that the cause of action stated in plaintiffs complaint herein is barred by Section 340.5 of the Code of Civil Procedure of the State of California, and a separate trial is requested pursuant to code of Civil Procedure Section 597.5." (Answer filed September 14, 2021, Fifth Affirmative Defense).

For its part, Dignity Health (and by joinder, Cottage) moves for summary judgment of the subrogation claim on the theory the action is barred by the affirmative defense of statute of limitations.

The resolution of both motions turns on which statute of limitations applies. Although application of the statute of limitations in a particular case may raise questions of fact that must be tried, summary judgment is proper when the uncontradicted facts are susceptible of only one legitimate inference. (*Kline v. Turner* (2001) 87 Cal.App.4th 1369, 1374.)

The parties disagree on which statute of limitations would have been applicable had the insured brought suit in his or her own behalf. Dignity Health argues the applicable statute of limitations is Code of Civil Procedure section 340.5, which states: "In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be . . . one year after the plaintiff discovers . . . the injury." They argue this is the only sensible statute of limitations because the plaintiff insurers are seeking to enforce the medical malpractice claims that the Velazquezes assigned to Corazon Del Campo, LLC, Capay, Inc. dba Farm Fresh to You, and Barsotti Brothers Inc. in the settlement. (Plaintiff Insurers' Exhibits, Ex. 4, Settlement Agreement, ¶ 2.4—"To the extent permissible by law, PLAINTIFFS assign their claims against the medical providers to DEFENDANTS.") They argue this must be so because: "It is clear from the averments asserted in plaintiffs' first cause of action that plaintiffs are seeking damages as a consequence of compensation paid to Ms. Velazquez (and to her husband) for injuries and damages sustained as a result of an automobile accident involving an employee of plaintiffs' insured. The caption applied by plaintiffs to their first cause action, and the allegations set forth therein, makes it apparent that plaintiffs, in the first cause of action, are pursuing damages under a theory of subrogation. Indeed, the word "indemnity" does not even appear in the first cause of action." (Opposition to Plaintiff's Motion for Summary Adjudication, p. 2, ll. 18-24.)

Plaintiff insurers argue the applicable statute of limitations is Code of Civil Procedure section 335.1, which provides: "An action for . . . injury to . . .an individual caused by the wrongful act or neglect of another" must be brought within two years. Plaintiff insurers' assert the subrogation cause of action is based the theory that the medical defendants were joint tortfeasors who are legally liable to the underlying defendants' insureds under an equitable indemnification theory.

This complaint was filed on June 11, 2020. Ms. Velazquez was injured in an accident on July 9, 2018. Dignity Health argues that the underlying plaintiffs were on constructive notice to sue for medical malpractice no later than July 10, 2018, when Ms. Velazquez suffered signs of strike and no later than January 18, 2019 when counsel for co-defendants filed an ex parte application to continue trial in the

Underlying Action for the express purpose of joining the medical providers and the hospital as potential cross-defendants in the Underlying Action. The June 11, 2020 complaint was not filed within one year under any of these scenarios.

Insurers argue that the cause of action did not accrue under section 335.1 until it paid the settlement. (*Smith v. Parks Manor* (1987) 197 Cal.App.3d 872, 879.) Settlement payments totaling $17 million were distributed by insurers as follows: Great American Insurance Company paid $10 million on June 3, 2019, and Everest National Insurance Company paid $7 million on June 19, 2019. (Insurers UMF No. 5.) Thus, insurers argue, the earliest the two-year statute could expire was June 3, 2021 and their filing on June 11, 2020 was well within the limitation period.

Applicable Law

The court begins with the observation that this is a murky area of the law. "It is hard to imagine another set of legal terms with more soporific effect than indemnity, subrogation, contribution, co-obligation and joint tortfeasorship." (*Herrick Corp. v. Canadian Ins. Co. of Calif.* (1994) 29 Cal.App.4th 753, 756.) Although courts often use the terms "equitable contribution," "equitable indemnity" and "equitable subrogation" interchangeably, they are really separate remedies that apply in discrete situations. Different results may be reached depending on which remedy is invoked. (See *Travelers Indem. Co. of Conn. v. Navigators Specialty Ins. Co.* (2021) 70 Cal.App.5th 341, 362-363; *Hartford Cas. Ins. Co. v. Mt. Hawley Ins. Co.* (2004) 123 Cal.App.4th 278, 286-288; *California Capital Ins. Co. v. Employers Comp. Ins. Co.* (2023) 89 Cal.App.5th 638, 644-645.)

Usually, a general liability insurer that has paid a claim to a third party on behalf of its insured may have an equitable right of subrogation against (1) other parties who contributed to the harm suffered by the third party (joint tortfeasors) under an equitable indemnification theory, and (2) other parties who are legally liable to the insured for the harm suffered by the third party (such as by an indemnification agreement) under a contractual indemnity theory. (*Interstate Fire & Casualty Ins. Co. v. Cleveland Wrecking Co.* (2010) 182 Cal.App.4th 23, 32 [acknowledging "decades of cases consistently holding that an insurer may be equitably subrogated to its insured's indemnification claims."]; *Berg v. Pulte Home Corp.* (2021) 67 Cal.App.5th 277, 290; see *Valley Crest Landscape Development, Inc. v. Mission Pools of Escondido, Inc.* (2015) 238 Cal.App.4th 468, 483.) Under subrogation principles, the paying insurer is placed in the shoes of the insured and may to pursue recovery from third parties responsible to the insured for the loss for which the insurer was liable and paid. (*Fireman's Fund Ins. Co. v. Maryland Casualty Co.* (1994) 21 Cal.App.4th 1586, 1595–1596.)

Equitable indemnity is a loss-shifting procedure. "Equitable indemnity applies in cases in which one party pays a debt for which another is primarily liable

and which in equity and good conscience should have been paid by the latter party." (*United Services Auto. Ass'n v. Alaska Ins. Co.* (2001) 94 Cal.App.4th 638, 644-645; see also *Prince v. Pacific Gas & Elec*. Co. (2009) 45 Cal.4th 1151, 1163 (not an insurance case)—"[T]he basis for indemnity is restitution.") In third party cases, an insurer may be subrogated to its insured tortfeasor's indemnification claims against other joint tortfeasors. (See *Interstate Fire & Cas. Ins. Co. v. Cleveland Wrecking Co*. (2010) 182 Cal.App.4th 23, 34—general liability insurer that paid claim to third party on behalf of its insured was subrogated to its insured's equitable indemnity rights against joint tortfeasors who contributed to harm.) The most common equitable subrogation action is one brought by an insurer against a wrongdoer whose wrong caused the loss paid by the insurer. (*Patent Scaffolding Co. v. William Simpson Constr. Co.* (1967) 256 Cal.App.2d 506, 512.) No express assignment of the insured's cause of action is required; equitable subrogation is accomplished by operation of law. (*Id.* at 510.)

The elements of an equitable subrogation claim are: " '(1) [t]he insured has suffered a loss for which the party to be charged is liable, either because the latter is a wrongdoer whose act or omission caused the loss or because he is legally responsible to the insured for the loss caused by the wrongdoer; (2) the insurer, in whole or in part, has compensated the insured for the same loss for which the party to be charged is liable; (3) the insured has an existing, assignable cause of action against the party to be charged, which action the insured could have asserted for his own benefit had he not been compensated for his loss by the insurer; (4) the insurer has suffered damages caused by the act or omission upon which the liability of the party to be charged depends; (5) justice requires that the loss should be entirely shifted from the insurer to the party to be charged ...; and (6) the insurer's damages are in a stated sum, usually the amount it has paid to its insured, assuming the payment was not voluntary and was reasonable.' " (*Essex Ins. Co. v. Heck* (2010) 186 Cal.App.4th 1513, 1522-1523.)

Because subrogation rights are purely derivative, an insurer cannot acquire anything by subrogation to which the insured has no right and can claim no right the insured does not have. (*Fireman's Fund Ins. Co. v. Maryland Casualty Co.* (1998) 65 Cal.App.4th 1279, 1292.) Because of the derivative nature of subrogation, a subrogee insurer is subject to the same statute of limitations that would have been applicable had the insured brought suit in his or her own behalf. (*Bank of New York Mellon v. Citibank, NA.* (2017) 8 Cal.App.5th 935, 948, citing *Valley Crest Landscape Development, Inc. v. Mission Pools of Escondido, Inc.* (2015) 238 Cal.App.4th 468, 481 [equitable subrogation claim based on contractual indemnity subject to statute of limitations for breach of written contract].)

Request for Judicial Notice

Dignity Health requests the court take judicial notice of 9 documents and three facts pursuant to Evidence Code section 452 subdivision (d), which permits the court to take judicial notice of records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States. The documents are all documents filed in the Santa Barbara Superior Court in the underlying action or in this action. The facts are noticeable pursuant to Evidence Code section 452 subdivision (h), as they are not reasonably subject to dispute. Nor are they disputed as no opposition has been filed. The court grants the request.

Merits

The court rejects Dignity Health's theory that the first cause of action for subrogation arises from the medical malpractice claims that the Velazquezes assigned to Corazon Del Campo, LLC, Capay, Inc. dba Farm Fresh to You, and Barsotti Brothers Inc. in the settlement.[1] Dignity Health's argument is based on the allegations of the first cause of action in which the Dignity Defendants are characterized as healthcare providers who provided care and treatment to Mrs. Velazquez, allegations that defendants deviated from "the acceptable standard of medical care ... " (Complaint, ¶ 26), and the allegation that the plaintiffs' insureds had "an existing, assignable cause of action against the Defendants which the insured could have asserted for its own benefit, had it not been compensated for its loss by Plaintiffs." (Complaint, ¶ 34.) Dignity Health argues the allegation in paragraph 34 of the Complaint, and the assignment of rights itself, would have no meaning if the subrogation claim were not based on the assignment of the malpractice claim.

But these allegations are equally consistent with a claim of subrogation for equitable indemnity. (*Interstate Fire & Casualty Ins. Co. v. Cleveland Wrecking Co.* (2010) 182 Cal.App.4th 23, 32—right of subrogation against other parties who contributed to the harm suffered by the third party (joint tortfeasors) under an equitable indemnification theory.) One of the elements of a subrogation claim for equitable indemnity is that the insurer has suffered damages caused by the act or omission upon which the liability of the party to be charged depends. (*Essex Ins. Co. v. Heck* (2010) 186 Cal.App.4th 1513, 1522-1523.) As applied in this case, it requires a showing of wrongdoing on the part of the medical defendants. (See *Essex Ins. Co. v. Heck* (2010) 186 Cal.App.4th 1513, 1523—"As pertinent here, in order to prevail on its subrogation claim, Essex must prove that it compensated its insured for the same loss for which Dr. Heck is liable. Dr. Heck's liability turns on whether he committed medical malpractice when he treated Dompeling.") Thus, the general allegations of the Complaint and specifically the allegation in paragraph 26 of the

[1] The court notes that this does not appear to be a "refocused" motion so much as it is an expanded motion. The court will nevertheless address the arguments raised to finally resolve this issue.

Complaint do not show as a matter of law that the underlying claims lie solely in medical malpractice. Moreover, the equitable indemnity claim is assignable (see *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1380) although an express assignment, as noted above, is not necessary. Thus, the allegation in paragraph 34 of the Complaint is consistent with an equitable indemnification cause of action.

Dignity Health points out that Insurer's counsel has expressly conceded in oral statements to the court on two different occasions that its subrogation cause of action is subject to the 1-year statute of limitations applicable to healthcare providers as set forth in Code of Civil Procedure §340.5. (See Dignity Health Exh. 7, 11/27/23 RT at pp. 16-17 ["We are subject to [section 340.5]. ... My clients are subject to that statute because our subrogation action is against medical providers. So we are subject to the one-year statute"]; see also Dignity Health Exh. 8, 2/16/23 RT, at pp. 48-49 ["The 340.5., I think we know, pretty clearly applies in equitable subrogation"].) In addition, they point out the attorneys for Defendants, Capay, Inc. dba Farm Fresh to You, Corazon Del Campo, LLC and Barsotti Brothers Inc. made a motion to continue trial so they could file a cross-complaint against the medical providers, noting that they had to do so soon because of the short one-year statute of limitations for medical malpractice. (Dignity Health UMF No. 21.)

Dignity Health asserts that such concessions judicially estop plaintiff insurers from taking any other position. The courts have applied the doctrine of judicial estoppel in order to prevent a party from gaining an advantage by taking one position, then seeking a second advantage by taking an incompatible position (*Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 47). Judicial estoppel applies when: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake. (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 183.) The doctrine's dual goals are to maintain the integrity of the judicial system and to protect parties from opponents' unfair strategies. Application of the doctrine is discretionary. (*Blix, supra*, 191 Cal.App.4th at 47.)

While it appears plaintiffs' counsel indeed made such statements, it is apparent from review of the entire transcript that counsel never conceded that the first cause of action in the complaint was based on assignment of the underlying plaintiffs' medical malpractice claims. In fact, he argued quite the opposite. (Dignity Health Exh. 7, p. 19, ll. 14-20—" What it is is that subrogation gives the insurer the right to seek recovery of money that tortfeasors that weren't part of the original case have caused, so you're not standing in the shoes to bring a malpractice action. What you are doing is standing in the shoes to bring an equitable indemnity action and that's what the insurers are doing. They're bringing an equitable indemnity

action. And this -- to say they're standing in the shoes of people who are -- who can sue for professional negligence is misleading. We are not doing that. We're suing for equitable indemnity.") In any event, the court's May 15, 2023 ruling was not based on any such expressions by counsel. The court was not duped. Nor is there reason to believe the statements were the product of unfair strategies. The court consequently declines to exercise its discretion in this regard.

Consistent with its May 15, 2023 ruling, the court construes the first cause of action as subrogation of the underlying defendants' equitable indemnity claims against the Medical Defendants (joint tortfeasors) who contributed to the harm suffered by the underlying plaintiffs under an equitable indemnification theory. As such, the relevant statute of limitations is that applicable to equitable indemnity claims. In this case, that statute of limitations is Code of Civil Procedure section 335.1, which set the limitations at two years from the date payment is made. (See *Preferred Risk Mutual Ins. Co. v. Reiswig* (1999) 21 Cal.4th 208, 213, fn. 2 (*Preferred Risk*).)

In *Preferred Risk,* Rebekka Pratte (Pratte) was injured when her hand was slammed in the door of a van owned by the First Church of God—Santa Maria, Inc. (the Church). She was treated by defendant Doctors Reo Reiswig, Karen S. Kolba, and C. Baring Farmer (the doctors). After treatment she developed a serious condition known as complex regional pain syndrome. Pratte sued the Church, which was insured by plaintiff Preferred Risk Mutual Insurance Company (Preferred Risk). On January 24, 1996, Preferred Risk paid the $1 million policy limit to Pratte in exchange for a release of all claims against the Church. On April 10, 1997, Preferred Risk filed a complaint in subrogation to the Church's right of equitable indemnity against all three doctors, essentially claiming that they should indemnify it for the amount it spent to settle Pratte's action against the Church because their malpractice caused Pratte's injuries. The Cal. Supreme Court ultimately granted review to decide whether the MICRA 90–day tolling provision for actions "based upon" professional negligence (section 364, subdivision (d)), applied to Preferred Risk's equitable indemnity action. Before resolving that issue, however, the Cal. Supreme Court observed:

> "In the Court of Appeal, Preferred Risk asserted as an alternative argument that the one-year MICRA statute of limitations in section 340.5 applied to its action, which automatically fell under the protection of section 364, subdivision (d), as a derivative MICRA lawsuit. The Court of Appeal concluded that section 340.5 does not govern indemnity actions, and in its petition for review and opening brief, Preferred Risk conceded the point. Prior to oral argument in this court, we asked the parties for supplemental briefing on the question whether section 340.5 had any application to this case. In light of the supplemental briefing and our own review of the question, we conclude the statute has no application to Preferred Risk's indemnity action."

(*Preferred Risk, supra,* 21 Cal.4th at 213, fn. 2.)

While the Cal. Supreme Court opinion offers no more analysis on the issue, the Court of Appeal opinion directly addressed it. (See Cal. Rules of Court, rule 8.1115(e)(2)—"After decision on review by the Supreme Court, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter . . . is citable and has binding or precedential effect, except to the extent it is inconsistent with the decision of the Supreme Court or is disapproved by that court." The Cal. Court of Appeal held:

> "The basis for the remedy of equitable indemnity is restitution. 'One person is unjustly enriched at the expense of another when the other discharges liability that it should be his responsibility to pay.' (*Children's Hospital v. Sedgwick* (1996) 45 Cal.App.4th, 1780, 1786.) The injury allegedly suffered by Preferred Risk in paying the settlement is an economic harm rather than the type of personal injury which triggers Section 340.5. (See *Hensler v. City of Glendale* (1994) 8 Cal.4th, 1, 22-23 [Statute of limitations is determined by 'gravamen' of cause of action]."
>
> (*Preferred Risk Mutual Insurance Company v. Reiswig* (1998) 66 Cal.App.4th, 575, 581.)

More to the point, the Cal. Court of Appeal found that "the 'injury' in an action for equitable indemnity . . . consists of the indemnity's payment to the injured party and is independent of the underlying claim. (Citations omitted)." (*Id.*) The Cal. Court of Appeal then held that "a party is injured by the wrongful conduct of its fellow tortfeasors when it pays more than its share of a settlement to an injured plaintiff. An action for equitable indemnity is thus an action for 'injury' . . . caused by the wrongful act or neglect of another, 'as defined by [the predecessor to 335.1]'. (Citation omitted)." (*Id.* at 582.) In citing the text of Code of Civil Procedure Section 340(3) [the predecessor to 335.1] as imposing a one-year statute of limitations for "an action . . . for injury to or for the death of one caused by the wrongful act or neglect of another . . .", the Cal. Court of Appeal held that the one-year statute of limitations of that section applied on those facts, since there was no more specific statute governing a particular type of indemnity claim." (*Id* at 582.)

It is notable that both the Cal. Court of Appeal and the Cal. Supreme Court were presented with the predecessor version of section 335.1, which restricted the limitation period to one year. (See Former Code Civ. Proc., § 340, subdivision (3) superseded by Stats. 2002, ch. 448, § 2.) In 2002, the Legislature enacted Code of Civil Procedure section 335.1, which became effective on January 1, 2003, and authorizes a two-year limitations period for actions for "assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of

another." (Stats.2002, ch. 448, § 2.) There is nothing in either *Preferred Risk* opinion that suggests the temporal limitation itself was a relevant consideration in its analysis. Instead, the analysis focused on the statutory language, which remains the same.

Thus, this court likewise "conclude(s) [section 340.5] has no application to [this] indemnity action." (*Preferred Risk, supra,* 21 Cal.4th at 213, fn. 2.) Under section 335.1, the limitations period is two years from the date payment was made. the earliest the two-year statute could expire was June 3, 2021 and their filing on June 11, 2020 was well within the limitation period. As such, arguments whether tolling under section 364 applies are moot.

For the reasons stated above, the court denies the Motion for Summary Judgment re Statute of Limitations filed on June 29, 2023 by Dignity Health and grants the Motion for Summary Adjudication re Statute of Limitations filed on June 8, 2023 by Great American Insurance Company and Everest National Insurance Company finding there is no merit to the defense of statute of limitations as alleged by Dignity Health (Answer filed December 3, 2020, Eighth Affirmative Defense); Cottage (Answer filed October 15, 2020, Third Affirmative Defense); and Oh (Answer filed September 14, 2021, Fifth Affirmative Defense).