

JUN 16 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YUMI ITO, etc.

Plaintiff - Appellant,

v.

THE TOKIO MARINE AND FIRE
INSURANCE CO., LTD.,

Defendant - Appellee.

No. 07-55253

D.C. No. CV-03-06835-JFW

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted June 4, 2008**
Pasadena, California

Before: KOZINSKI, Chief Judge, ALDISERT*** and D.W. NELSON, Circuit
Judges.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Ruggero J. Aldisert, Senior United States Circuit
Judge for the Third Circuit, sitting by designation.

Appellant Yumi Ito appeals from a grant of summary judgment in favor of Appellee The Tokio Marine and Fire Insurance Company, Ltd. (“Tokio Marine”).

Ito’s claims are barred by the relevant statutes of limitations. The “discovery rule” does not render Ito’s claims timely because Ito’s July 1998 letter to the California Insurance Commissioner demonstrates that, at that time, she suspected wrongdoing on the part of Tokio Marine, was aware of the factual basis for her claims and had an incentive to file suit. *See Jolly v. Eli Lilly & Co.*, 751 P.2d 923, 927-928 (Cal. 1988). Because Ito has not pleaded a civil conspiracy, the last overt act rule cannot save her claims. *See Wyatt v. Union Mortgage Co.*, 598 P.2d 45, 53 (Cal. 1979). Additionally, because Ito’s reliance on alleged promises of reimbursement made by Tokio Marine was not reasonable, the doctrine of equitable estoppel does not prevent Tokio Marine from asserting that Ito’s claims are barred by the relevant statutes of limitations. *See Mills v. Forestex Co.*, 134 Cal. Rptr. 2d 273, 298 (Cal. Ct. App. 2003).

The District Court did not abuse its discretion in refusing to grant Ito’s request for a continuance of the summary judgment hearing pursuant to Rule 56(f), Federal Rules of Civil Procedure, because the evidence Ito sought would not have created an issue of material fact.

AFFIRMED.