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No Showing of Prejudice Required To Deny Based on Late Notice Under Claims-Made-and-Reported Policy
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The United States District Court for the Western District of Washington, applying Washington law, has granted summary judgment in favor of an insurer, holding that insurers are not required to prove prejudice when denying a claim under a claims made and reported policy for lack of timely notice. *Moody v. Am. Guar. & Liability Ins. Co.*, 2011 WL 1327120 (W.D. Wash. Apr. 7, 2011).

The claims-made-and-reported policy at issue had a policy period that expired on November 1, 2008. The insured did not purchase an extended reported period. The day before the policy expired, a plaintiff filed a complaint against the insured, which was not served on the insured until November 15, 2008. Notice of the suit was provided to the insurer on April 30, 2009, after the claim was assigned to the plaintiff in the underlying case by the insured as part of the settlement of the underlying claim. The insurer denied coverage on the basis that the claim was not made and reported within the policy period. The federal trial court granted the insurer's motion for summary judgment, stating that the "policy unambiguously requires that the insured notify [the insurer] of the claim during the policy period as a condition precedent for coverage" and that the "undisputed evidence demonstrates that [the insured] did not report [the plaintiff's] claim to [the insurer] during the policy period." Further, the court held that the "notice/prejudice rule," which requires an insurer to show actual prejudice when denying coverage for lack of timely notice, does not apply to claims made policies. Quoting *Safeco Title Insurance Co. v. Gannon*, 774 P.2d 30, 35 (Wash. Ct. App. 1989), the court held that "[i]f a court were to allow an extension of reporting time after the end of the policy period, such is tantamount to an extension of coverage to the insured gratis, something for which the insurer has not bargained."