

# Court Affirms No Coverage for Claim Reported After Expiration of Policy Period

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In an unreported decision, a California intermediate appellate court, applying California law, has affirmed summary judgment in favor of an insurer, holding that there was no coverage under a doctor's claims-made professional liability policy for a default judgment arising out of a medical malpractice lawsuit because the lawsuit was not reported to the insurer during the policy period. *Thompson v. Northwest Physicians Mut. Ins. Co.*, 2006 WL 2501578 (Cal. Ct. App. Aug. 30, 2006).

A patient brought a lawsuit against a doctor alleging medical malpractice during her pregnancy and the subsequent birth of her child. After obtaining a default judgment, the woman sought coverage under the doctor's professional liability policy. Notice of the lawsuit, however, was not provided to the insurer until three years after the insurer and doctor executed an agreement in which the policy was terminated early through a settlement agreement.

In affirming summary judgment for the insurer, the court held that: (1) the settlement agreement between the insurer and doctor could not be read to provide coverage for all events occurring prior to the policy's termination date because such a reading would rewrite the claims-made policy into an "occurrence" policy, (2) expert testimony proffered by the claimant regarding the insurer's claim handling was properly excluded because the claimant had not established the existence of a covered claim, and (3) under *Pacific Employers Insurance Co. v. Superior Court*, 221 Cal. App. 3d 1348 (Cal. App. 1990), the insurer did not have to show it was prejudiced by the late reported claim because requiring it to do so would extend coverage under the claims-made policy.