

# Notice-Prejudice Rule Does Not Apply to Claims-Made and Reported Policies in California

---

January 2006

In an unreported decision, the United States Court of Appeals for the Ninth Circuit, applying California law, has held that the notice-prejudice rule for late notice does not apply to claims-made and reported policies. *Heydar v. Westport Ins. Co.*, 2005 WL 3159718 (9th Cir. Nov. 29, 2005).

The policyholder failed to provide notice to its professional liability insurer of a lawsuit that otherwise would have been covered under the policy. During the subsequent policy period, it tendered the amended complaint, which, according to the court, "add[ed] more specification regarding his professional negligence." The Ninth Circuit held, without explanation, that the claim was first made during the earlier policy period. It noted that, under California law, the notice-prejudice rule does not apply to claims-made and reported policies. Accordingly, the policyholder's failure to tender the original complaint precluded coverage.

For more information, please contact us at 202.719.7130