wiley

NEWSLETTER

Ninth Circuit: Notice-Prejudice Rule Does Not Apply to Claims-Made-and-Reported Policies under Oregon Law

July 2008

The United States Court of Appeals for the Ninth Circuit, applying Oregon law in an unpublished decision, has held that an insurer does not need to show prejudice in order to deny coverage on late notice grounds under a claims-made-and-reported policy. *Or. Sch. Activities Assoc. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 2008 WL 2151443 (9th Cir. May 22, 2008).

The insured sought coverage under a claims-made-and-reported policy but failed to provide notice to the insurer within the policy period. The insured argued that, under Oregon's notice-prejudice rule, the insurer could not deny coverage on late notice grounds unless it could show that it was prejudiced.

In rejecting the insured's arguments, the appellate court noted that, although Oregon courts apply a notice-prejudice rule to occurrence policies, no Oregon appellate court has decided whether the rule applies to claims-made-and-reported policies. The court held that "[t]he purpose of the notice provision in an occurrence policy is to allow the insurer to conduct a timely investigation of the incident giving rise to coverage," whereas "[w]ith claims-made-and-reported polices . . . giving notice within the policy period is what actually creates coverage in the first instance." Furthermore, "[a]llowing the insured to invoke the notice-prejudice rule to claims made during the policy period would provide coverage the insurer did not intend to provide and the insured did not contract to receive." Therefore, the court concluded that "Oregon would follow the weight of authority and hold that the notice-prejudice rule does not apply to claims-made-and-reported policies."