

## Insurers Beware: California's Notice- Prejudice Rule Is a “Fundamental Public Policy”

For those insurers that seek to circumvent California's notice-prejudice rule, the California Supreme Court has just made that more difficult.

In *Pitzer College v. Indian Harbor Insurance Company*, 845 F.3d 993 (9th Cir. 2017), the Ninth Circuit certified questions to the California Supreme Court, including: “Is California's common law notice-prejudice rule a fundamental public policy for the purpose of choice-of-law analysis?” (*Pitzer College*, 845 F.3d at 994.) On August 29, 2019, the California Supreme Court answered that question in the affirmative: “In line with California's strong preference to avoid technical forfeitures of insurance policy coverage, we conclude ... that our notice-prejudice rule is a fundamental public policy of our state in the insurance context.” (*Pitzer College v. Indian Harbor Insurance Company*, — P.3d —, 2019 WL 4065521, Case No. S239510 (Cal. Aug. 29, 2019).

What does this mean for California policyholders? It means that insurers will have a tougher time using a policy's choice-of-law clause (e.g., calling for New York law to govern the policy and related disputes) to attempt to defeat coverage due to the insured's “late” notice to the insurer (e.g., not “as soon as practicable), notwithstanding that the insurer suffered no prejudice due to that purportedly late notice. This reinforces California's notice-prejudice rule as a bar to insurers denying coverage based on a technicality, which rule the Court summarized as “requir[ing] an insurer to prove that the insured's late notice of a claim has substantially prejudiced its ability to investigate and negotiate payment for the insured's claim.”

In *Pitzer College*, a college discovered soils at a dormitory construction site that required environmental remediation. The college commenced and completed the remediation work, which cost approximately \$2 million, but did not inform its pollution insurer until six months after discovering the soils and three months after completing remediation. The insurer denied coverage for the college's claim, arguing (among other things) that the college had failed to give notice as soon as practicable. After the college sued the insurer in California state court and the insurer removed the case to federal court, the insurer moved for summary judgment. The insurer argued that it had no coverage obligation to the college because the college's notice was



by Miles C. Holden

untimely.

The federal district court granted the insurer's motion. In so doing, it applied the policy's New York choice-of-law clause, reasoning that the college's notice was untimely pursuant to New York common law's notice rule, which does not require a showing of prejudice. The court explained that although such a clause can be overridden by a state's fundamental policy, the college had failed to show that California's notice-prejudice rule was such a policy. After the college appealed, the Ninth Circuit certified the question to the California Supreme Court, and the rest is history.

As the Court explained, California's notice-prejudice rule "favor[s] compensation of insureds over technical forfeiture." An important public policy indeed.

For more information, please contact:

**Miles C. Holden**, Partner  
415-995-5039  
mholden@hansonbridgett.com