NEWS AND UPDATES

A Florida court declares a hospital lien statute unconstitutional, a new law in California holds direct contractors liable for a subcontractor's non-payment of its employees, and the New Jersey Supreme Court clarifies the accrual date of the six-year statute of limitations for construction defect claims.

Washington

INSURED NOT ENTITLED TO DISCOVERY OF INSURER'S LITIGATION FILE

In *Richardson v. Gov't Employees Ins. Co.*, the insured filed suit alleging bad faith regarding the insurer's handling of her personal injury protection and underinsured motorist claims. In that litigation, the insurer produced its claim files. However, the insured also sought the insurer's litigation file, which contained documents, communications, and other information gathered by its attorney after the insured had filed the bad-faith lawsuit. The trial court ordered the insurer to produce the attorney's litigation file, finding that attorney-client privilege did not protect the file under the Washington Supreme Court's decision in *Cedell v. Farmers Ins. Co. of Wash*. The Court of Appeals reversed, holding that the trial court had erred in requiring the production of the litigation file. The Court of Appeals distinguished *Cedell* because *Cedell* did not address whether an insurer must produce a litigation file that is generated after the insured has filed suit.— *From CLM Member Geoffrey Bedell*

Pennsylvania

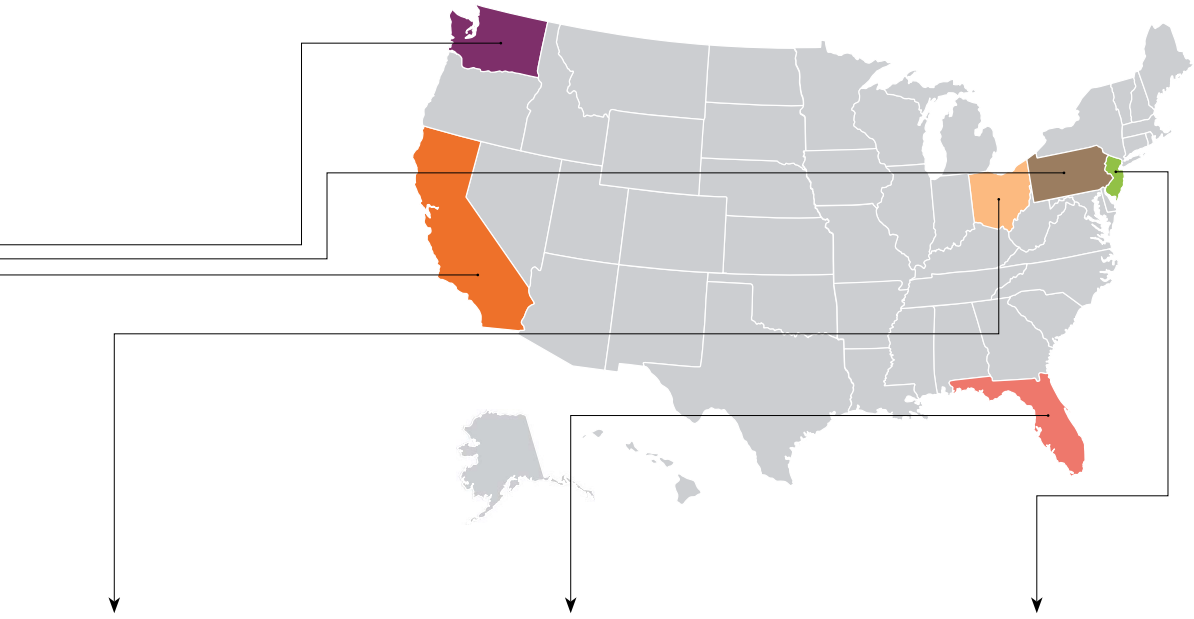
COURT UPHOLDS REGULAR USE EXCEPTION

In *Reeves v. The Travelers Companies*, a Pennsylvania trial court granted summary judgment to Travelers on an insured's breach of contract claim. Reeves, who was employed by the city of Philadelphia as a trade helper in its street lighting department, suffered a back injury and nerve damage when a parked city vehicle in which he was a passenger was struck by another motorist. In denying UIM coverage, Travelers invoked a policy exclusion for injuries sustained in any motor vehicle "furnished or available for the regular use of" the insured. Although noting that this type of exception can "effectively suspend the great majority of [UM/UIM] coverage for the insured employee whose office is his employer-owned vehicle and whose workday is on the road," the judge said that such a result alone did not allow the court to rewrite the terms of an unambiguous policy provision.— *From Northeast Ohio Chapter Secretary Michael C. Brink*

California

DIRECT CONTRACTORS LIABLE FOR SUBCONTRACTOR EMPLOYEE PAYMENTS

On Oct. 14, California Gov. Jerry Brown signed Assembly Bill 1701 into law. This law makes direct contractors liable for a subcontractor's non-payment of its employees. It is only applicable to private, non-public work. Under AB 1701, if a direct contractor hires and pays a subcontractor to perform electrical work, and the subcontractor does not pay its employees, the direct contractor is liable for the unpaid wages and fringe benefits, plus interest, regardless of the fact that the direct contractor already paid the subcontractor. The direct contractor, however, will not be liable for any penalties resulting from the subcontractor's failure to pay. Proponents of the law see it as a boon for employees of sketchy subcontractors and sub-subcontractors, while opponents see it as unnecessary legislation that will raise costs for direct contractors and, by extension, raise the costs of construction. Either way, direct contractors will be exposed to increased liability.— *From CLM Member Stephen J. Henning*



Ohio

PARENT HOUSEHOLD RESIDENT DURING TEMPORARY LIVING ARRANGEMENT

In *Lowe v. Farmers Ins. Of Columbus Inc.*, an Ohio appeals court addressed the novel question of whether the parent homeowner was a "resident of the household" of her child, whose family was living with her during the construction of their new home. Sue Lowe was hit by a motorist and was severely injured while walking across a street. She sued the tortfeasor driver for negligence, as well as both her personal auto insurer and her son William's auto insurer, Farmers, for UIM coverage. The Farmers policy definition of a named insured included a "family member…who is a resident of your household," although neither "resident" nor "household" was defined. In Ohio, the primary consideration for determining residency in a household is the non-temporary nature or regularity of the living arrangement. Despite testimony confirming the temporary nature of the Lowes' living arrangement, the appellate court concluded that there was an issue of fact about whether Mrs. Lowe was a resident of her son's household during his family's stay in her home while their new home was under construction.— *From Northeast Ohio Chapter Secretary Michael C. Brink*

Florida

HOSPITAL LIEN STATUTE DECLARED UNCONSTITUTIONAL

Anyone who has litigated on Florida's west coast knows that any personal injury settlement has been subject to "lien impairment" litigation by Lee Memorial Health Systems (LMHS). In 2000, the legislature created a public health care system under Chapter 2000-439 and granted LMHS the right to sue insurance companies for the full value of the lien amount when the hospital lien is not paid as part of the settlement. The statute further provided that no release would be valid unless LMHS was a party to the insurer's settlement. On Nov. 8, the 2nd District Court of Appeal, addressing this case of first impression, affirmed a summary judgment in favor of Progressive Select Insurance Company, expressly declaring the LMHS statute unconstitutional as an impermissible lien based on a private contract in violation of Article III, Section 11 (a) (9) of Florida's Constitution.—*From CLM Member Valerie Dondero*

New Jersey

COURT CLARIFIES CONSTRUCTION DEFECT STATUTE OF LIMITATIONS ACCRUAL DATE

In September, the New Jersey Supreme Court in *The Palisades at Fort Lee Condominium Association Inc. v. 100 Old Palisade LLC* articulated the accrual date of the six-year statute of limitations for construction defect claims. The court held that a construction defect action accrues not upon substantial completion of construction, but instead when the building's owner knows, or should have known through reasonable diligence, about the existence of an actionable claim. The owner then has six years in which to bring a claim. This accrual date does not restart when a new owner takes possession of the property, but is instead imputed to each subsequent owner. The date may vary for different defendants depending on when the owner was or should have been aware of the claims. The statute of repose remains in effect barring claims filed 10 years after substantial completion.— *From CLM Member Jacqueline A. Muttick*