

EXHIBIT 2

NEWS AND UPDATES

A New York precedent is challenged, California courts split on Right to Repair Act interpretations, and West Virginia is on the verge of limiting products liability actions against sellers that are not the manufacturers.

California

APPELLATE COURTS SPLIT ON RIGHT TO REPAIR LAW

The recent case of *Gillotti v. Stewart* reveals a split in state law authority concerning the preclusive effect of California's Right to Repair Act. *Gillotti* directly challenges the 4th Appellate District's 2013 holding in *Liberty Mutual Ins. Co. v. Brookfield Crystal Cove LLC* that the act "does not eliminate common law rights and remedies where actual damage has occurred." In *Gillotti*, the trial court rejected the argument that tort claims, such as negligence, based on violations of building standards covered by the act furnished an independent basis for recovery. Affirming the trial court's view, the 3rd Appellate District specifically disapproved of the *Liberty Mutual* rule, concluding that the act bars common law claims for damages caused by construction defects within the act's scope. This split of authority regarding the scope and preclusive effect of the act could be resolved by the California Supreme Court in *McMillin Albany LLC v. Superior Court*.—From *San Diego Chapter Vice President Michael Parme*

Arizona

INSURER CANNOT ASSERT EXCLUSION BASED ON INFORMATION FROM ITS OWN APPOINTED DEFENSE COUNSEL

In *Cosgrove v. National Fire & Marine Ins. Co.*, the U.S. District Court for the District of Arizona held that National Fire & Marine Ins. Co. (NFM) was estopped from denying coverage based on a policy exclusion when it obtained the supporting facts from insurer-retained defense counsel. While defending a general contractor (GC), WTM Construction, the insurer-appointed defense counsel reported to NFM that the GC had not entered into written subcontracts with the subcontractors. NFM asserted its subcontractor exclusion as a result. The court held that NFM was estopped to assert the exclusion, stating, "Precluding defendant from asserting a coverage defense based on the subcontractor exclusion may seem like a harsh result. But if defendant had done its own investigation of WTM's claims, rather than relying on the information disclosed by the attorney retained to represent WTM," then NFM would not be precluded from applying the exclusion.—From *CLM Member Alicia G. Curran*

Missouri

CHANGES IN STORE FOR WORKERS COMP LAW, HUMAN RIGHTS ACT

Two last-minute changes to the Missouri Workers Compensation Law and Human Rights Act will benefit employers. Senate Bill 66 clarifies uncertainty about how reaching maximum medical improvement could limit an employee's right to temporary total disability benefits, how long an employee has to counter an employer's disability rating, and under what circumstances an employee's voluntary choice to leave an employer could terminate benefits. The bill also states that any positive test for a non-prescribed controlled substance constitutes a rebuttable presumption that the substance contributed to the employee's injury, limiting benefits by one-half. Senate Bill 43 addresses the Missouri Human Rights Act, eliminating supervisor liability, setting damage caps, refocusing juries on "business judgment" and actual discrimination rather than "fairness," clarifying the Whistleblower Law, and requiring proof of a motivating factor in discrimination claims. The governor is expected to sign both bills.—From *CLM Members Damon M. Gruber, John M. Allen, and Philip Sholtz*