

Around the Nation

News and Updates from CLM State Chairs, Reps, and Committees

COLORADO

Cost-Sharing Allocation for Construction Defect

In *D.R. Horton Inc. v. Travelers Indemnity*, the U.S. District Court for the District of Colorado decided how D.R. Horton's defense costs should be equitably allocated between insurers and subcontractors who owed a joint duty to defend in a construction defect case. The allocation methods considered included "equal shares" and "policy limits." The policy limits allocation was rejected because its results were arbitrary and unreliable. The court joined a minority of jurisdictions and assessed each represented party an equal share of the defense costs. Given that subcontractors owed a duty to defend only once, it was inconsequential if the subcontractor had multiple policies. The allocation formula further excluded unrepresented and nonparty subcontractors.—*From Colorado State Chapter Member Mark A. Neider*

CALIFORNIA

Batson Challenge Extended to Sexual Identity

Almost 30 years ago, the U.S. Supreme Court issued an opinion in *Batson v. Kentucky*, which stated that peremptory challenges could not be used to exclude a juror based on race, as doing so would violate the Equal Protection Clause of the 14th Amendment. Over the years, the court extended this protection to include women. Last month, the 9th U.S. Circuit Court of Appeals ruled in *SmithKline Beecham v. Abbott Laboratories* that counsel could not exclude jurors based solely on sexual orientation. This is the first federal court opinion to specifically address the Equal Protection Clause for gays and lesbians in the jury box.—*From California State Chapter Member Kathleen Walker*

MISSOURI

Restoring Balance to Claims Litigation

The Missouri House and Senate introduced HB 1344 and SB 617—described as "Restoring Balance to Claims Litigation"—to address unfavorable bad-faith law in the state. The legislation seeks to abrogate Missouri case law that allows an insured to reject a reservation of rights requiring the carrier either to withdraw the reservation or have its selected attorney be discharged. It also would nullify Missouri case law that exposes a carrier in a garnishment action to liability for an underlying judgment in excess of the policy limits. Additionally, the legislation addresses recent Missouri case law that limits the extent to which a carrier in a garnishment action can collaterally attack findings made in the underlying judgment.—*From Missouri State Chapter Lead Chair Jeff Brinker*