

2006

The Use of Experts in

**CONSTRUCTION LAW
AND LITIGATION***A Guide for Attorneys, Engineers, and Architects*

Earn up to 12.00 Hours of MCLE Credit Including 2.25 Hours of Ethics Credit
CEP Credit for Engineers and TREC Credit Also Available



September 7-8, 2006

Westin Oaks

Houston, Texas

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2006 CONSTRUCTION LAW

THE ROLE AND USE OF EXPERTS IN CONSTRUCTION DEFECT LITIGATION

A Guide for Attorneys, Engineers, and Architects

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THURSDAY MORNING—SEPT. 7, 2006

Presiding Officer: Ian P. Faria, Houston

8:00 a.m. Registration Opens

Includes continental breakfast.

8:50 a.m. Welcoming Remarks

9:00 a.m. .33 hr

The Role and Use of Experts: A Reminder and Refresher on Why and When to Use Them

An overview of the need for and use of experts to prove key issues in construction law cases. This session is designed to outline and highlight key issues that will be covered in more detail throughout the conference.

William R. Allensworth, Austin

9:20 a.m. .50 hr including .25 hr ethics

Initial Retention of Experts

A discussion on how to identify the "right" expert; practices in retaining and contracting with experts; setting budgets, schedules, and scope; avoiding conflicts; and identifying ethical issues.

Daniel K. Craddock, Austin

9:50 a.m. .75 hr

The Qualifications of Experts

Experts need to meet certain burdens through their certifications, licenses, and qualifications. "Certified" versus "Licensed"—is there a difference? Architect versus Engineer—what can or can't each testify to? At what time do you bring in an expert? Why do you have to have one? When do you need one? Who can testify to what? *Daubert* and other cases?

Richard E. Schellhammer, Dallas

10:35 a.m. Break

10:50 a.m. .50 hr ethics

Herding Cats: Communication with and Management of Experts

Avoiding common pitfalls in communicating with experts and navigating privilege, evidentiary, joint defense, consulting vs. testifying, and other issues that arise when sharing experts.

Charles J. Cain, Austin

11:20 a.m. .75 hr

A Smorgasbord of Insurance Issues for the Construction Law Practitioner

A discussion of duty to defend issues and the use of extrinsic evidence, the right to independent counsel, *Frank's Casing* and recoupment, and, of course, the *Lamar Homes* case pending before the Supreme Court of Texas.

Lee H. Shidlofsky, Austin

LUNCHEON PRESENTATION

12:05 p.m. Pick Up Box Lunch

Included in conference registration fee.

12:20 p.m. .50 hr

Failures: Anatomy and Response

An illustrated discussion featuring examples of construction failures and the scientific method for determining probable cause.

David W. Fowler, Austin

THURSDAY AFTERNOON

Presiding Officer: Richard E. Schellhammer, Dallas

1:15 p.m. .50 hr

Preparing Your Expert to Testify

This session addresses important information on preparing your expert to testify to the court. Includes the expert's report and expert communication.

Amy Dunn Taylor, Houston

1:45 p.m. .50 hr

There is Still No Crying in Baseball: Cross-Examination of Experts

What are the rules for successful cross-examination of experts? This session will review what works and what doesn't.

Jeff D. Otto, Austin

2:15 p.m. .50 hr ethics

To Have or Not To Have...Experts at Mediation?

This presentation addresses the pros and cons of having construction experts present during mediation. There are some distinct advantages and disadvantages.

W. Jerry Hoover, Houston

2:45 p.m. Break

3:00 p.m. 1.00 hr

Disruption, Delay, and Impact Claims; Measure of Damages in Construction Cases

Common construction project concerns, such as how schedules should be utilized to evaluate disruptions and delays, and what is the definition of an impact or productivity loss claim, will be reviewed. How should delay and impact damages be measured in construction cases? What must be successfully proven to receive an award for schedule delay and/or productivity loss damages?

John D. Borcharding, Austin
C.A. (Joe) Davis, Austin

4:00 p.m. .50 hr

IP Issues for Design Professionals, Contractors and Developers: A Discussion of IP-Related Claims and Liability Exposure for Those in Design, Construction, and Development

The discussion will focus on several high profile IP suits recently brought against construction industry entities, and will also address Internet anti-competition claims and false advertising. Included in this session will be an introduction to liability insurance coverage issues related to such claims.

Michael W. Huddleston, Dallas

4:30 p.m. 1.00 hr ethics

Ethics Panel Discussion for Lawyers, Engineers, and Architects

This session opens by identifying the various ethical rules and regulations applicable to attorneys, engineers, and architects (Texas and national rules) in a construction context. The majority of this presentation is devoted to several "real-world" scenarios highlighting and analyzing common professional tensions between engineers, architects, contractors, insurers, developers, and developers' counsel.

Moderator: Mark H. McGivern, Bedford, MA
Clark L. Griffith, Bedford, MA
Walter H. Mizell, Austin
Kenneth R. Quigley, Bedford, MA

5:30 p.m. Adjourn to Reception

FRIDAY MORNING—SEPT. 8, 2006

Presiding Officer: Ian P. Faria, Houston

9:00 a.m. .50 hr

Case Law Update

A review of recent cases affecting construction.

Stephen B. Paxson, Houston

9:30 a.m. 1.00 hr

Understanding Construction Documents: Architectural and Engineering Drawings and Specifications

This session is designed to provide a foundation and overview on the organization of contract documents for a construction project. How are construction documents (i.e., drawings and specifications) prepared and organized to create contract documents? What is the standard of care for architects and engineers that seal/sign the documents? How are the documents used by the various parties (e.g., owners, building officials, contractors) in the course of a project? How can a layperson read and understand the documents? This session will also discuss which design professional is responsible for the various parts of the contract documents and how to resolve conflicts in the contract documents.

Leonard G. Lane, Jr., Houston
Robert M. Taylor, Jr., Houston

10:30 a.m. .75 hr

This is Only a Test: The Science and Law of Engineering Tests

This session examines common forensic testing techniques and reliability. The scientific and legal limitations of commonly used forensic engineering tests for structural capacity, watertightness, and soils analysis will be examined.

Michael B. Gerstle, Dallas
Michael W. Lee, Irving

11:15 a.m. Break

11:25 a.m. 1.00 hr

The Anatomy of Common Construction Defects

Through the use of mock ups, this session will illustrate common construction defects and manufacturing issues relating to water penetration. There will be a window mock up and a water spray rig, and different methods of diagnosing window leaks will be discussed. In addition to illustrating destructive testing techniques, there will also be a demonstration of the use of thermal imaging technology, which is particularly helpful when destructive testing is not possible.

Moderator: Clayton C. Cannon, Houston
S. Frank Culberson, Houston
Duncan E. Doss, Houston
Scott R. Jetton, Houston
David A. Padovan, Houston

12:25 p.m. Lunch on Your Own

FRIDAY AFTERNOON

Presiding Officer: Richard E. Schellhammer, Dallas

1:30 p.m. .75 hr

Residential Performance Standards: A Model of Consistency?

A panel discussion of the underlying intent of the TRCCA's performance standards for residential construction, their application in the field, and the ramifications of both on design professionals, contractors, and their respective counsel.

Moderator: Michael B. Gerstle, Dallas
Susan K. Durso, Austin
Chip Henderson, San Antonio

2:15 p.m. .75 hr

Progression of a Residential Construction Defect Claim: Notice, SIRP, RCLA, and Final Resolution from the Plaintiff's and the Defendant's Perspective

This session will compare and contrast how residential construction defect claims are presented, prosecuted, and resolved through the Texas Residential

Construction Commission, including the appeals process and the interplay of the Residential Construction Liability Act. The first half of the presentation will be from the perspective of the claimant/plaintiff, followed by the perspective of the respondent/defendant.

Ian P. Faria, Houston
Anne P. Stark, Dallas

3:00 p.m. Adjourn

REGISTRATION FOR CL06

Mail this registration form to: The University of Texas School of Law, Attn. CL06
P.O. Box 7759, Austin, TX 78713-7759 **or fax a copy to: (512) 475-6876**

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Invoices, confirmations, and receipts are emailed to these addresses.

REGISTRATION - Includes Course Binder, Thursday Box Lunch, and Sponsored Reception on Thursday

- Early Registration Fee due by Wed., August 30, 2006..... \$435.00
- Registration Fee after Wed., August 30, 2006 \$485.00

CONFERENCE PUBLICATIONS AND MEDIA

Allow 2-4 weeks from conference date for delivery.

Course Binder \$200.00

Note: Conference registration includes Course Binder.

Audio CD Set \$175.00

eBinder on CD (PDF format) \$200.00/\$50.00

(\$200 purchased alone, \$50 with registration or purchase of Course Binder or Audio CD Set)

In-House CLE: Bring the conference in-house and learn at your convenience.

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Houston
September 7-8, 2006
CONFERENCE LOCATION



Westin Oaks
 5011 Westheimer
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 (713) 960-8100

SPECIAL RATE \$169
 (subject to availability)
 good through August 7, 2006

Parking: complimentary
 self-parking; valet \$12
 (subject to change)

KEY DATES

Registration & Cancellation

Aug. 30, 2006–5 p.m.
last day for early registration
 add \$50 for registrations
 received after this time

Sept. 1, 2006–5 p.m.
last day for full refund

Sept. 5, 2006–5 p.m.
last day for partial refunds
 \$50 processing fee applied

Sept. 7, 2006–9 a.m.
conference begins

**M
C
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E**

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 12.00 hours, of which 2.25 credit hours will apply to legal ethics/professional responsibility credit.

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