

2006 Construction Law Conference
September 7-8, 2006 • Westin Oaks Hotel • Houston, TX

Thursday Morning, Sep. 7, 2006

Presiding Officer:

Ian P. Faria, Coats, Rose, Yale, Ryman & Lee, P.C. - Houston, TX

9:00 am 0.00 hr ethics	<p>The Role and Use of Experts: A Reminder and Refresher on Why and When to Use Them</p> <p>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.</p> <p>William R. Allensworth, Allensworth and Porter, L.L.P. - Austin, TX</p>
9:20 am 0.50 hr 0.25 hr ethics	<p>Initial Retention of Experts</p> <p>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.</p> <p>Daniel K. Craddock, Craddock Massey, P.C. - Austin, TX</p>
9:50 am 0.75 hr	<p>The Qualifications of Experts</p> <p>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?</p> <p>Richard E. Schellhammer, Goins, Underkofler, Crawford & Langdon, L.L.P. - Dallas, TX</p>
10:50 am 0.50 hr ethics	<p>Herding Cats: Communication with and Management of Experts</p> <p>Avoiding common pitfalls in communicating with experts and navigating privilege, evidentiary, joint defense, consulting vs. testifying, and other issues that arise when sharing experts.</p> <p>Charles J. Cain, Cain & Skarnulis LLP - Austin, TX</p>
11:20 am 0.75 hr	<p>A Smorgasbord of Insurance Issues for the Construction Law Practitioner</p> <p>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.</p> <p>Lee H. Shidlofsky, Visser Shidlofsky LLP - Austin, TX</p>

Thursday Afternoon, Sep. 7, 2006

Presiding Officer:

Richard E. Schellhammer, Goins, Underkofler, Crawford & Langdon, L.L.P. - Dallas, TX

12:20 pm 0.50 hr	<p>Luncheon Presentation: Failures: Anatomy and Response</p> <p>An illustrated discussion featuring examples of construction failures and the scientific method for determining probable cause.</p> <p>David W. Fowler, The University of Texas at Austin - Austin, TX</p>
1:15 pm 0.50 hr	<p>Preparing Your Expert to Testify</p> <p>This session addresses important information on preparing your expert to testify to the court. Includes the expert's report and expert communication.</p> <p>Amy Dunn Taylor, Kane Russell Coleman - Houston, TX</p>
1:45 pm 0.50 hr	<p>There Is Still No Crying in Baseball: Cross-Examination of Experts</p> <p>What are the rules for successful cross-examination of experts? This session will review what works and what doesn't.</p> <p>Jeff D. Otto, Thompson, Coe, Cousins & Irons, L.L.P. - Austin, TX</p>
2:15 pm 0.50 hr ethics	<p>To Have or Not to Have...Experts at Mediation?</p> <p>This presentation addresses the pros and cons of having construction experts present during mediation. There are some distinct advantages and disadvantages.</p> <p>W. Jerry Hoover, Attorney Mediator Arbitrator - Houston, TX</p>
3:00 pm 1.00 hr	<p>Disruption, Delay, and Impact Claims; Measure of Damages in Construction Cases</p> <p>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?</p> <p>John D. Borcharding, The University of Texas at Austin - Austin, TX Carleton A. Davis, Brown McCarroll LLP - Austin, TX Michael P. Pappas, Pappas Consulting, LLC - Austin, TX</p>
4:00 pm 0.50 hr	<p>IP Issues for Design Professionals, Contractors and Developers: A Discussion of IP-Related Claims and Liability Exposure for Those in Design, Construction, and Development</p> <p>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.</p> <p>Michael W. Huddleston, Shannon, Gracey, Ratliff & Miller LLP - Dallas, TX</p>

4:30 pm
0.00 hr
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.

Clark Griffith, CCA, LLC - Bedford, MA
Mark McGivern, CCA, LLP - Bedford, MA
Walter Hiram Mizell, Brown McCarroll LLP - Austin, TX
Ken Quigley, CCA, LLC - Bedford, MA

Friday Morning, Sep. 8, 2006

Presiding Officer:

Ian P. Faria, Coats, Rose, Yale, Ryman & Lee, P.C. - Houston, TX

9:00 am
0.50 hr

Case Law Update

A review of recent cases affecting construction.

Stephen Bond Paxson, Paxson & Associates, P.C. - Houston, TX

9:30 am
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., Chelsea Place Design, Inc. - Houston, TX
Robert M. Taylor Jr., Chelsea Place Design, Inc - Houston, TX

10:30 am
0.75 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, Gerstle, Minissale & Snelson, L.L.P. - Dallas, TX
Michael W. Lee, Wiss, Janney, Elstner Associates, Inc. - Irving, TX

11:25 am
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.

Clayton C. Cannon, Stumpf Farrimond, PC - Houston, TX
S. Frank Culberson, Rimkus Consulting Group, Inc. - Houston, TX
Duncan E. Doss, Rimkus Consulting Group, Inc. - Houston, TX
Scott R. Jetton, Rimkus Consulting Group, Inc. - Houston, TX
David A. Padovan, Rimkus Consulting Group, Inc. - Houston, TX

Friday Afternoon, Sep. 8, 2006

Presiding Officer:

Richard E. Schellhammer, Goins, Underkofler, Crawford & Langdon, L.L.P. - Dallas, TX

1:30 pm
0.75 hr

The Texas Residential Construction Commission's Performance Standards: How Are They Used?

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.

Susan K. Durso, TRCC - Austin, TX
Janet Gallagher, Texas Residential Construction Commissio - Austin, TX
Michael B. Gerstle, Gerstle, Minissale & Snelson, L.L.P. - Dallas, TX
Chip Henderson, Contexts Consultants & Architects - San Antonio, TX

2:15 pm
0.75 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, Coats, Rose, Yale, Ryman & Lee, P.C. - Houston, TX
Anne P. Stark, The Law Office of Anne P. Stark - Dallas, TX