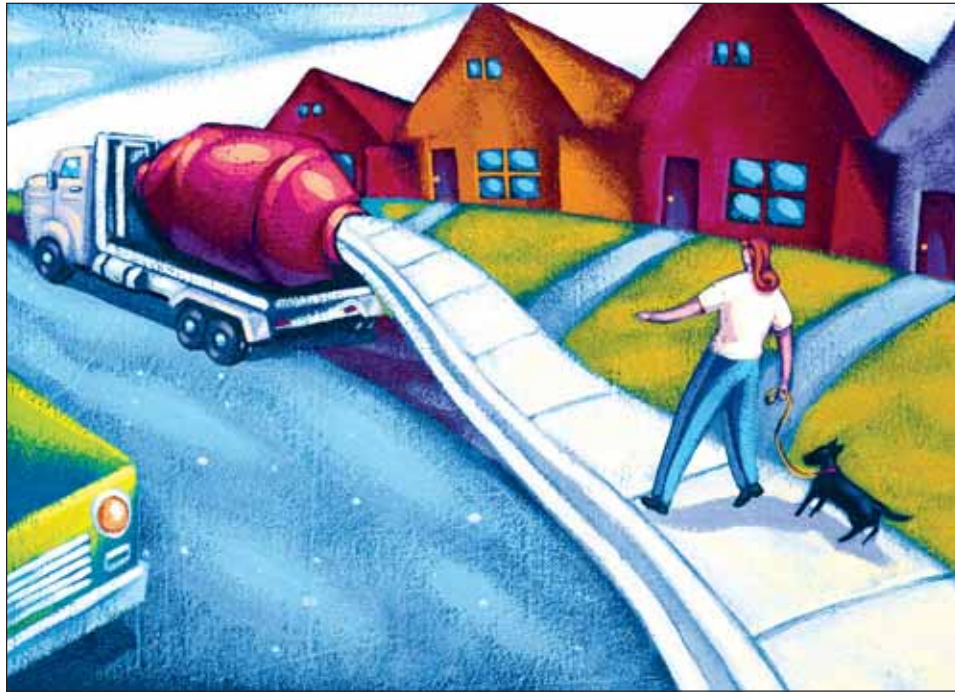


2010

# CONSTRUCTION LAW CONFERENCE



September 23–24, 2010  
Belo Mansion ▪ Dallas, Texas

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## **SPONSORS**

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Earn up to 12.50 Hours of MCLE Credit including 3.00 Hours of Ethics Credit  
Specialization Credit Approved for Civil Trial Law and Real Estate Law  
Up to 9.00 Hours of TREC General Elective MCE and up to 10.00 Hours of TDI CE

# 2010 CONSTRUCTION LAW CONFERENCE

September 23–24, 2010 ▪ Belo Mansion ▪ Dallas, Texas

Earn up to 12.50 Hours of MCLE Credit including 3.00 Hours of Ethics Credit  
Specialization Credit Approved for Civil Trial Law and Real Estate Law

## THURSDAY MORNING, SEPT. 23, 2010

### Presiding Officer:

M. Gavin McGee, Attorney at Law,  
Bellaire, TX

### 8:00 a.m. Registration Opens

Includes continental breakfast.

### 8:50 a.m. Welcoming Remarks

### 9:00 a.m. .75 hr

#### Construction Industry Basics: What Contractors Expect Their Lawyers to Know, or at Least Wish They Did

In any commercial practice area, attorneys with a working knowledge of their clients' business issues and concerns are better equipped to more effectively handle their legal affairs. The construction industry is unique in many ways. This presentation addresses the basic inner workings of the industry, including the typical relationships between the various contracting parties, the standard practices, terminology and documents, and the most common legal issues that arise.

M. Gavin McGee, Attorney at Law, Bellaire, TX

### 9:45 a.m. .75 hr

#### RCLA Refresher and Update: Litigation is Back!

Undoubtedly, with the demise of the TRCCA, the clock on how residential construction disputes are resolved has been turned back. Most homeowners would say that's good news. Is it time to turn the clock back even further?

Mark S. McQuality, Shackelford, Melton &  
McKinley, LLP, Dallas, TX

#### Commentators:

Charles J. Cain, Cain & Skarnulis LLP, Austin, TX  
Anne P. Stark, The Law Office of Anne P. Stark, Dallas, TX

### 10:30 a.m. Break

### 10:45 a.m. .75 hr

#### Damages in Construction Litigation: Current Issues and Case Law

This session covers damages recoverable by both contractors and owners related to construction projects. With respect to contractors, an overview is presented regarding damages for delay claims, lost profits, increased overhead, quantum meruit and wrongful termination by owner. Regarding owners, this session covers damages for unexcused delays, cost to complete after termination or abandonment, loss of use, lost profits and damages for construction defects, including cost of repair versus diminished value.

Clayton C. Cannon, Stumpf Cannon Fasthoff PC,  
Houston, TX

### 11:30 a.m. .50 hr

#### What Do You Mean I'm not Entitled to Recover My Damages? The Ramifications of Clauses that Limit Liability in Construction Contracts

This session analyzes the ramifications of clauses that limit liability in construction contracts, including clauses covering liquidated damages, no damages for delay, and waiver of consequential damages.

Allison J. Snyder, Porter & Hedges, LLP, Houston, TX

### 12:00 p.m. Break for Lunch

## THURSDAY AFTERNOON

### Presiding Officer:

Steven E. Kennedy, McGuire Craddock &  
Strother PC, Dallas, TX

### LUNCHEON PRESENTATION

Lunch included in conference registration fee.

### 12:15 p.m. .75 hr

#### What's Ahead for the Construction Industry?

This overview of the macroeconomics of the construction industry provides a background to explore the changes that are transforming the business of construction. The presentation also looks into the risks and challenges that face the future of the design and construction industry.

Karl F. Almstead, Turner Construction Company,  
New York, NY

### 1:00 p.m. Break

### 1:15 p.m. .50 hr

#### All Good Things Must Come to an End: Legal Issues in Construction Contract Terminations

When can an owner terminate a contract for mere convenience? What does it take to justify termination "for cause"? Under what conditions can a termination be converted from "for cause" to "for convenience"? And what are the implications of the distinction? A discussion of these questions and more involving construction contract terminations.

C. A. "Joe" Davis, Brown McCarroll, L.L.P., Austin, TX

### 1:45 p.m. .50 hr

#### Escalation Clauses: Dealing with Changes in the Price of Materials and Navigating the Battle of the Forms

Coverage of the standard contract clauses applicable to price escalation, applicable statutes, the case law covering these issues and practical advice for dealing with price escalation risk, both pre- and post-contract.

William B. "Ben" Westcott, Andrews Myers Coulter &  
Hayes, P.C., Houston, TX

### 2:15 p.m. 1.00 hr

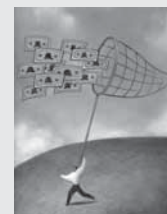
#### The Basics and Beyond: Drafting and Negotiating Key Clauses in Construction Contracts

From "must-have" provisions to "gotchas" that should be avoided, this presentation covers a wide range of contract issues that arise in both standardized forms and manuscript agreements.

Matthew David Beshara, Ford Nassen & Baldwin P.C.,  
Dallas, TX  
Steven E. Kennedy, McGuire Craddock &  
Strother PC, Dallas, TX

### 3:15 p.m. Break

## ALSO OF INTEREST



### Mastering the Art of Collecting Debts and Judgments

September 2-3, 2010  
Hyatt Regency Austin  
Austin, Texas

## Green Building: Design, Certification, Contracts, Warranties and Liabilities

3:30 p.m. .83 hr

### LEED 101 and Beyond: Incentives, Design, Construction Pitfalls, Certifications and Contracts

A panel discussion of the design issues, contracts and certifications for green and sustainable development that includes a look at the most common green standards and how they are used to certify green buildings. The panel also comments on the financial incentives driving developers to "go green" and takes a look at some of the possible challenges with this type of construction—and what you can do to avoid those challenges.

Matthew J. DeVries, LEED AP, Smith Cashion & Orr, PLC, Nashville, TN  
Jeffrey H. Peters, P.E., LEED AP, Rimkus Consulting Group, Inc., Houston, TX

4:20 p.m. .75 hr

### Liability and Litigation Issues Arising from Green Building and LEED Certification

Are you prepared to help your clients understand and deal with the risks involved when the project seeks LEED certification? Ever heard of "greenwashing"? This session examines many of the legal issues related to green building and projects seeking LEED certification, including contract provisions, warranties, insurance and potential litigation.

Cathy Lilford Altman, Carrington, Coleman, Sloman & Blumenthal L.L.P., Dallas, TX  
Dale E. Butler, LEED AP, Butler Law Firm, PC, Flower Mound, TX

5:05 p.m. Adjourn

## FRIDAY MORNING, SEPT. 24, 2010

### Presiding Officer:

Michael B. Gerstle, Gerstle, Minissale & Snelson, L.L.P., Dallas, TX

8:00 a.m. Conference Room Opens

Includes continental breakfast.

8:30 a.m. .50 hr

### Current Developments and Practice Tips Involving Liens in Place

A discussion of issues that arise once the lien is in place including suit to foreclose the lien, fights with lenders over removables, what materials constitute removables and protecting lien rights when the owner files for bankruptcy.

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

9:00 a.m. .50 hr

### Current and Emerging Issues in Litigation Involving Design Professionals

Recent trends in claims against design professionals for defective design or contract administration with emphasis on claims by contractors, including negligent misrepresentation claims. The presentation also includes defenses that may be raised by design professionals facing such claims, including the economic loss doctrine and contractual limitations of liability.

Jeffrey A. Ford, Ford Nassen & Baldwin P.C., Dallas, TX

9:30 a.m. .50 hr including .25 hr ethics

### Construction Litigation, Part I: Getting and Keeping the Coverage

This session examines construction liability including pleading into coverage, defending claims and allocating liability between parties.

Michael W. Huddleston, Shannon, Gracey, Ratliff & Miller LLP, Dallas, TX

10:00 a.m. Break

10:15 a.m. 1.00 hr including .25 hr ethics

### Construction Litigation, Part II: Effective Damage Claims and Use of Forensics Experts

The successful resolution of construction defect claims and litigation relies heavily on the development and opinions of the experts. This panel addresses issues and tips in identifying and qualifying the experts needed, developing and using effective investigation data and protocols, and avoiding *Daubert/Robinson* challenges. The expert and attorney panel discusses strategies utilized in past cases that have proven successful in resolving disputes involving multi-party complex litigation.

Mark McGivern, CSI, Aff.M. ASCE, CCA, LLC, Bedford, MA  
Michael B. Gerstle, Gerstle, Minissale & Snelson, L.L.P., Dallas, TX  
Gary Zwyer, Wiss, Janney, Elstner Associates, Inc., Northbrook, IL

#### Commentator:

Michael W. Huddleston, Shannon, Gracey, Ratliff & Miller LLP, Dallas, TX

11:15 a.m. .75 hr including .25 hr ethics

### Construction Litigation, Part III: Trying a Construction Defect Case

Two seasoned trial lawyers from both sides of the docket share their insights on how to win jury trials in construction cases.

Marc A. Young, Cokinios Bosien & Young, San Antonio, TX  
William J. Chriss, Law Office of William J. Chriss, P.C., of counsel to Gravely & Pearson, L.L.P., Austin, TX

12:00 p.m. Break for Lunch

## FRIDAY AFTERNOON

### Presiding Officer:

C. A. "Joe" Davis, Brown McCarroll, L.L.P., Austin, TX

### LUNCHEON PRESENTATION

Lunch included in conference registration fee.

12:15 p.m. 1.00 hr ethics

### Ethics Issues for Construction Lawyers: Conflicts, Settlement Discussions, Liability Allocations and the Proposed New Texas Rules

A look at the substance and potential impact of recent changes to the disciplinary rules and the impact they will have on construction attorneys.

Thomas H. Watkins, Brown McCarroll, L.L.P., Austin, TX

1:15 p.m. Break

1:30 p.m. 1.25 hrs ethics

### State of the Art Dispute Resolution: ADR, Mediation and Arbitration—Lessons from Construction Disputes

An interactive panel of experts from the attorney, expert, insurance and neutral perspectives share some new thoughts on some old processes.

#### Moderator:

Karl Bayer, Dispute Resolution Expert, Austin, TX

#### Panelists:

Eileen Jenkins, United States Liability Insurance Group, Wayne, PA  
Mark McGivern, CSI, Aff.M. ASCE, CCA, LLC, Bedford, MA  
Glen Wilkerson, Davis & Wilkerson, Austin, TX

2:45 p.m. Adjourn

### CREDIT

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 12.50 hours, of which 3.00 credit hours will apply to legal ethics/professional responsibility credit. The University of Texas School of Law is a State Bar of California approved MCLE provider (#1944).

Specialization Credit Approved for Civil Trial Law and Real Estate Law

Up to 9.00 Hours of TREC General Elective MCE and up to 10.00 Hours of TDI CE

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Wiss, Janney, Elstner Associates, Inc.  
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of counsel to Gravely & Pearson, L.L.P.  
Austin, TX

GARY R. GURWITZ  
Atlas & Hall, L.L.P.  
McAllen, TX

“

Overall excellent!

The program was well-organized.

The speakers offered interesting and relevant discussion topics.

Good cross section of topics on construction.

I enjoyed the program because it was well run and the topics were substantive.

Good topics. Good balance between litigation and transactional matters.

The program was informative and hit the areas of importance.

The speakers were excellent.

Knowledgeable and entertaining speakers!

”

## HOW TO REGISTER

### Mail your registration to:

The University of Texas  
School of Law  
Attn. CLE—CL10  
P.O. Box 7759  
Austin, TX 78713-7759

Or fax to:  
512-475-6876

Or register online:  
www.utcle.org

Questions? Call us at 512-475-6700

## MATERIALS, AUDIO AND IN-HOUSE CLE

### Printed Materials in Course Binder

Leading practitioners and academics provide the definitive set of materials.

### eBinder on CD

Add the electronic version of the conference materials to your course registration or purchase of the Course Binder or Audio MP3 Speeches on CD or Audio CD Set for only \$50. eBinders are distributed 3–5 weeks after the conference and include searchable versions of printed materials in PDF format.

### Audio MP3 Speeches on CD or Audio CD Set

Listen to the Construction Law Conference on the go. Informative, topical and entertaining presentations recorded from UT Law's other live CLE programs are also available.

### In-House CLE

In-House CLE for one or more participants—as many as you want! Receive full MCLE credit. We'll accredit the course for you, and provide one Audio CD Set plus a Course Binder for each participant.

## REGISTRATION FOR CL10

Mail this registration form to:

The University of Texas School of Law, Attn. CLE—CL10  
P.O. Box 7759, Austin, TX 78713-7759 or fax a copy to: 512-475-6876

### PLEASE PRINT CLEARLY

Bar Card# \_\_\_\_\_  TX  Other State: \_\_\_\_\_  N/A

Name [ Mr. / Ms. ] \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

Registrant's Email (required) \_\_\_\_\_

Assistant's Email (optional) \_\_\_\_\_

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

### REGISTRATION

Includes Course Binder and Thursday and Friday Luncheon Presentations

Early Registration Fee due by Wednesday, September 15, 2010 .....\$450

Registration Fee after Wednesday, September 15, 2010 .....\$500

### CONFERENCE PUBLICATIONS AND MEDIA

*Allow 3–5 weeks from the conference date for delivery.*

Course Binder WITHOUT Conference Registration.....\$225  
Note: Conference registration includes Course Binder.

Audio MP3 Speeches on CD.....\$130

Audio CD Set.....\$200

eBinder on CD (PDF format).....\$225/\$50  
(\$225 purchased alone, \$50 with registration or purchase of Course Binder or Audio CD Set or Audio MP3 Speeches on CD)

### IN-HOUSE CLE: Bring the conference in-house and learn at your convenience.

*Allow 3–5 weeks from the conference date for delivery.*

In-House CLE for 1—Includes Audio CD Set and Course Binder.....\$400

\_\_\_\_\_ Add participants (includes Course Binder) for \$225 each.....\$ \_\_\_\_\_

TOTAL ENCLOSED .....\$ \_\_\_\_\_

### METHOD OF PAYMENT

Check (make checks payable to: The University of Texas at Austin)

VISA or  MasterCard (sorry, no AMEX or Discover)

Card number     -     -     -

X \_\_\_\_\_  
Authorized Signature

/    
Exp. Date (mm/yy)



E-mail us at

[utcle@law.utexas.edu](mailto:utcle@law.utexas.edu)

or call us at

**512-475-6700**

for more information

## DALLAS

September 23-24, 2010

### Belo Mansion



2101 Ross Avenue  
Dallas, TX 75201  
214-220-0239

#### Parking:

\$3 per day for Dallas Bar Members;  
\$10 per day for non-Dallas Bar Members  
(subject to change)

### NEARBY ACCOMMODATIONS

#### Fairmont Hotel

1717 N. Akard Street  
Dallas, TX 75201  
214-720-5290

#### Special Rate: \$149

good through August 23, 2010  
(subject to availability)

### KEY DATES

**September 15, 2010, 5 p.m.**

*last day for early registration*  
add \$50 for registrations  
received after this time

**September 17, 2010, 5 p.m.**

*last day for full refund*

**September 20, 2010, 5 p.m.**

*last day for partial refund*  
\$50 processing fee applied

**September 23, 2010, 9 a.m.**

*conference begins*

## UPCOMING UTCLE PROGRAMS OF INTEREST



### Fundamentals of Insurance

A Guide to the Claims Process for Commercial Litigators,  
Business Lawyers, Brokers and New Coverage Counsel

July 29-30, 2010

Belo Mansion  
Dallas, Texas

August 12-13, 2010

Norris Conference Center -  
CityCentre  
Houston, Texas



44th Annual William W. Gibson, Jr.

### Mortgage Lending Institute

September 23-24, 2010

Four Seasons Hotel  
Austin, Texas

October 14-15, 2010

Belo Mansion  
Dallas, Texas

#### ©Video Replay

November 11-12, 2010

Norris Conference Center - CityCentre  
Houston, Texas



15th Annual

### Insurance Law Institute

October 14-15, 2010

InterContinental Stephen F. Austin  
Austin, Texas

Presented by

The Insurance Law Section of the State Bar of Texas  
The University of Texas School of Law