

2011

CONSTRUCTION LAW



September 22–23, 2011
Belo Mansion ▪ Dallas, Texas

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THURSDAY MORNING, SEPT. 22, 2011

Presiding Officer:

Mark McGivern, CCA, LLC, Austin, TX,
and Bedford, MA

8:00 a.m. Registration Opens

Includes continental breakfast.

8:20 a.m. Welcoming Remarks

8:30 a.m. .50 hr

Construction Law Update

An overview of some of the new case law impacting construction law practitioners and a preview of the new laws and changes to current statutes provided by the 82nd Texas Legislature, which will be discussed in further detail during the luncheon presentation.

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

RISK MANAGEMENT AND CONTRACT ISSUES

9:00 a.m. .50 hr

No Damages for Delay Clauses: Key Issues and Drafting Considerations

No damages for delay clauses are a potential shield for general contractors. Key considerations for use and drafting are discussed.

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

Co-Author:

Cara D. Kenemer, Goins, Underkofler, Crawford &
Langdon, L.L.P., Dallas, TX

9:30 a.m. .50 hr

Direct vs. Consequential Damages

A discussion of agreed remedies and damage measures focusing on contract and consequential damages.

Jo Ann Merica, Sedgwick LLP, Austin, TX

10:00 a.m. .50 hr

The Use and Enforceability of Liquidated Damage Clauses

Drafting and enforcing liquidated damage clauses can depend upon a number of considerations. From determining if your clients' damages are a penalty or a reasonable forecast, to understanding how various construction scheduling issues impact the application of liquidated damage clauses, this session provides an overview of how these types of clauses can be enforced or invalidated.

Gerald L. Stovall, Hall, Render, Killian, Heath &
Lyman, P.C., Louisville, KY
Anthony J. Gonzales, Spire Consulting Group, LLC,
Austin, TX

10:30 a.m. Break

10:45 a.m. .50 hr

Standards of Completion

A discussion on how tribunals interpret completion clauses and when a project is used for its "intended purpose." The session also analyzes competing substantial completion clauses, identifies recommended completion clauses based on project type, and provides practice tips to assist parties and practitioners in alleviating uncertainty in drafting and pinpointing completion dates.

Brett D. Lamb, Gardere Wynne Sewell LLP, Dallas, TX
Giselle Finne Gafford, Gardere Wynne Sewell LLP,
Dallas, TX

11:15 a.m. .50 hr

Surety Issues, Performance Bonds and Payment Bonds

An outline of common issues that impact acceptance or denial of the surety claim.

David M. Kleiman, Kleiman Lawrence Baskind
Fitzgerald LLP, Dallas, TX

11:45 a.m. .50 hr

Indemnification: The Good, the Bad and the Ugly

This presentation explores the current state of Texas law and its practical application.

Tonya Powers Johannsen, The Beck Group, Dallas, TX

12:15 p.m. Break to Pick Up Lunch

Included in conference registration fee.

THURSDAY AFTERNOON

Presiding Officer:

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

LUNCHEON PRESENTATION

12:30 p.m. .50 hr

Legislative Update

Sen. Kirk Watson, Texas State Senate, District 14,
Austin, TX (Invited)

1:00 p.m. Break

WHO PAYS?

1:15 p.m. .50 hr

A Practical Guide to Coverage and Policy Provisions for Construction Liability

A look at common issues and policy provisions for construction activity.

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

1:45 p.m. .50 hr

Basic Insurance Case Law Update for Construction Lawyers

Cynthia A. Holub, Porter Hedges LLP, Houston, TX

2:15 p.m. 1.17 hrs

The Changing Insurance Market for Construction in 2011: Where We Have Been, Where We Are Going and Why It Matters

A panel of experienced insurance professionals discusses market changes and reactions to judicial rulings finding coverage for construction defects, mass claims involving construction using products such as Chinese drywall, evolving attempts to limit coverage for contractual indemnity and for additional insureds, the procurement of coverage for workers compensation for subcontractors in order to get statutory employer status under the Workers Compensation Act, and the development of new insurance products.

Moderator:

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

Panelists:

Jeff Fritts, Willis Group Holdings, Addison, TX
Paul Primavera, Lockton Companies, LLC,
Washington, DC
Eileen Jenkins, United States Liability Insurance Group,
Wayne, PA

3:25 p.m. Break

3:40 p.m. .33 hr

The Certificate of Merit: Overview and Update on Emerging Trends

In this year alone, more than a dozen reported cases have addressed the Certificate of Merit statute. Opinions continue to evolve. This session details the current case law, identifies trends in the law, and addresses the statute's potential interplay with the most recent round of tort reform legislation.

Charles J. Cain, Cain & Skarnulis LLP, Austin, TX

4:00 p.m. .33 hr

Sales Tax Issues for Construction Lawyers: Common Pitfalls, Pointers and Planning Opportunities

This session explores how contract terms can affect the sales tax obligations of contractors, subcontractors and customers.

Curtis J. Osterloh, Scott, Douglass & McConico, L.L.P., Austin, TX

THE GOVERNMENT CALLS: WHAT TO DO WHEN ICE OR OSHA SHOWS UP AT THE CONSTRUCTION SITE

4:20 p.m. .50 hr

Immigration Issues for Contractors and Subcontractors

This presentation addresses current immigration-related topics of relevance to the construction industry such as the E-Verify program, I-9 audits and undocumented worker issues.

John D. Smart, Winstead PC, Dallas, TX

4:50 p.m. .50 hr

How to Advise Your Contractor When Occupational Safety and Health Administration (OSHA) Shows Up

In theory, OSHA and the employer are on the same side. The employer wants a safe workplace and OSHA's mission is to promulgate and enforce safety standards. In practice, every employer needs to understand how to respond when OSHA comes knocking. This presentation focuses on the practice and procedure for OSHA investigations.

W. Jackson Wisdom Jr., Martin, Disiere, Jefferson & Wisdom, L.L.P., Houston, TX

5:20 p.m. Adjourn

FRIDAY MORNING, SEPT. 23, 2011

Presiding Officer:

John W. Nassen, Ford Nassen & Baldwin, P.C., Dallas, TX

8:00 a.m. Conference Room Opens
Includes continental breakfast.

8:30 a.m. 1.00 hr including .50 hr ethics

Construction Litigation: Identifying the Players and Pressure Points with an Eye toward the End Game

Panelists identify and analyze the factors that can assist or detract the parties as they move a case towards judgment or settlement, with a special focus on strategies that keep the end game in focus.

Moderator:

Cathy Lilford Altman, Carrington, Coleman, Sloman & Blumenthal, L.L.P., Dallas, TX

Panelists:

Lawrence T. Bowman, Cozen O'Connor, Dallas, TX
Mark L. Parisi, White and Williams LLP, Philadelphia, PA
Craig M. Schumacher, Carpenter & Schumacher, P.C., Plano, TX

9:30 a.m. .67 hr including .25 hr ethics

Allocating Liability and Damages in Multiparty Construction Litigation

A discussion of the complexities of multiparty construction litigation and practical strategies for dealing with those issues.

Matthew B. Cano, Allensworth & Porter, LLP, Austin, TX
R. Douglas Rees, Cooper & Scully, P.C., Dallas, TX

10:10 a.m. Break

10:25 a.m. .83 hr ethics

Electronic Discovery and Document Production in Construction Litigation: Costs, Ethics and Privilege Disputes

This panel discussion explores the growing role of electronic discovery in construction litigation, how we can make it work for us, and how we can make it more economical.

Moderator:

Jennifer Evans Morris, Carrington, Coleman, Sloman & Blumenthal, L.L.P., Dallas, TX

Panelists:

John W. Nassen, Ford Nassen & Baldwin, P.C., Dallas, TX
David W. Sandlin, Rimkus Consulting Group, Inc., Houston, TX

11:15 a.m. .50 hr

Top 10 Mistakes Litigators Make in Construction Arbitrations

A look at some of the most common mistakes that impact an arbitrator's understanding of your case and ways to avoid them.

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

11:45 a.m. Break to Pick Up Lunch
Included in conference registration fee.

FRIDAY AFTERNOON

Presiding Officer:

Dale E. Butler, Winstead PC, Fort Worth, TX

LUNCHEON PRESENTATION

12:00 p.m. .75 hr

Effective Use of Demonstrative Evidence in Construction Litigation

Construction cases present unique difficulties in the presentation of evidence. The need to simplify technical issues can only be accomplished through the use of compelling graphics and carefully placed visual strategies. This session addresses various types of demonstrative exhibits—from low-tech to high-tech—and the special considerations the use of such evidence requires.

Edward Josiah, Nautilus Consulting, LLC, Syosset, NY

Commentator:

William J. Chriss, Law Office of William J. Chriss, P.C., of counsel to Gravely & Pearson, L.L.P., Austin, TX

12:45 p.m. Break

1:00 p.m. .75 hr

Green and Sustainable Building and LEED Certification: Best Drafting Practices to Define and Limit Liability

Understanding and addressing risks and liability unique to "green" construction projects is important. Learn valuable strategies for drafting and negotiating favorable contract terms for green LEED projects.

Jason C. Spencer, Ford Nassen & Baldwin, P.C., Austin, TX

Commentator:

Dale E. Butler, Winstead PC, Fort Worth, TX

1:45 p.m. .42 hr

Intellectual Property Protection for Architectural Works and Other Designs

An overview of the nature and scope of intellectual property protection available to design professionals in the construction industry, including copyright, patent, trademark and trade dress.

Henry "Hank" J. Fasthoff IV, Adams and Reese LLP, Houston, TX

2:10 p.m. .50 hr ethics

Mediation: What Works?

A seasoned mediator discusses the most effective, efficient and ethical tools utilized by attorneys during meditations.

Corbet F. Bryant Jr., Mediator, Arbitrator and Attorney at Law, Richardson, TX

2:40 p.m. Adjourn

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ANNE P. STARK
The Law Office of Anne P. Stark
Dallas, TX

The program was uniformly superior.

Presenters are knowledgeable.
Papers are excellent.

The materials are great and
will be used in office.

All sessions were good and
relevant to practice.

Great content, topics and speakers.

Excellent!

HOW TO REGISTER

Mail your registration to:

The University of Texas
School of Law
Attn. CLE—CL11
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

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STANDARD REGISTRATION

Includes Printed Course Binder (only) and Thursday and Friday Lunch Presentations

☐ Early Registration Fee due by Wednesday, September 14, 2011\$470

☐ Registration Fee after Wednesday, September 14, 2011\$520

GREEN REGISTRATION

Includes Electronic Materials on USB Key (only) and Thursday and Friday Lunch Presentations

☐ Early Registration Fee due by Wednesday, September 14, 2011\$465

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CONFERENCE PUBLICATIONS AND MEDIA

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

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Note: Conference Registration includes Course Binder.

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

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DALLAS

September 22–23, 2011

CONFERENCE LOCATION



Belo Mansion

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

Self-Parking:

\$4 per day for Dallas Bar members;
\$10 per day for non-Dallas Bar members

Nearby Accommodations: The Fairmont Hotel

1717 N. Akard St.
Dallas, TX 75201
214-720-2020

KEY DATES

September 14, 2011, 5 p.m.

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

September 16, 2011, 5 p.m.

last day for full refund

September 19, 2011, 5 p.m.

last day for partial refund
\$50 processing fee applied

September 22, 2011, 8:30 a.m.

conference begins

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