

**2011 Construction Law**  
**September 22-23, 2011 • Belo Mansion • Dallas, TX**

**Thursday Morning, Sep. 22, 2011**

**Presiding Officer:**

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

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| 8:00 am             | <b>Registration Opens</b><br><br>Includes continental breakfast.   |
| 8:20 am             | <b>Welcoming Remarks</b>   |
| 8:30 am<br>0.50 hr  | <b>Construction Law Update</b><br><br>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.<br><br>Ian P. Faria, Coats, Rose, Yale, Ryman & Lee, P.C. - Houston, TX   |
|                     | <b>RISK MANAGEMENT AND CONTRACT ISSUES</b>   |
| 9:00 am<br>0.50 hr  | <b>No Damages for Delay Clauses: Key Issues and Drafting Considerations</b><br><br>No damages for delay clauses are a potential shield for general contractors. Key considerations for use and drafting are discussed.<br><br>Co-Author:<br>Cara Doak Kennemer, Goins, Underkofler, Crawford & Langdon, L.L.P. - Dallas, TX<br>Richard E. Schellhammer, Goins, Underkofler, Crawford & Langdon, L.L.P. - Dallas, TX  |
| 9:30 am<br>0.50 hr  | <b>Direct vs. Consequential Damages</b><br><br>A discussion of agreed remedies and damage measures, focusing on contract and consequential damages.<br><br>Jo Ann Merica, Sedgwick LLP - Austin, TX  |
| 10:00 am<br>0.50 hr | <b>The Use and Enforceability of Liquidated Damage Clauses</b><br><br>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.<br><br>Anthony J. Gonzales, Spire Consulting Group, LLC - Austin, TX<br>Gerald L. Stovall, Hall, Render, Killian, Heath & Lyman, P.C. - Louisville, KY |
| 10:30 am            | <b>Break</b>   |

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| 10:45 am<br>0.50 hr | <b>Standards of Completion</b><br><br>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.<br><br>Giselle Finne Gafford, Gardere Wynne Sewell LLP - Dallas, TX<br>Brett Doshier Lamb, Gardere Wynne Sewell LLP - Dallas, TX |
| 11:15 am<br>0.50 hr | <b>Surety Issues, Performance Bonds and Payment Bonds</b><br><br>An outline of common issues that impact acceptance or denial of the surety claim.<br><br>David Mason Kleiman, Kleiman Lawrence Baskind Fitzgerald LLP - Dallas, TX   |
| 11:45 am<br>0.50 hr | <b>Indemnification: The Good, the Bad and the Ugly</b><br><br>This presentation explores the current state of Texas law and its practical application.<br><br>Tonya Powers Johannsen, The Beck Group - Dallas, TX   |
| 12:15 pm            | <b>Break to Pick Up Lunch</b><br><br>Included in conference registration fee.   |

## Thursday Afternoon, Sep. 22, 2011

### Presiding Officer:

**C. A. (Joe) Davis**, Brown McCarroll, L.L.P. - Austin, TX

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|                     | <b>LUNCHEON PRESENTATION</b>   |
| 12:30 pm<br>0.50 hr | <b>Legislative Update</b><br><br>An update of the construction-related legislation passed in 2011.<br><br>Kirk Watson, Texas State Senate, District 14 - Austin, TX  |
| 1:00 pm             | <b>Break</b>   |
|                     | <b>WHO PAYS?</b>   |
| 1:15 pm<br>0.50 hr  | <b>A Practical Guide to Coverage and Policy Provisions for Construction Liability</b><br><br>A look at common issues and policy provisions for construction activity.<br><br>C. A. (Joe) Davis, Brown McCarroll, L.L.P. - Austin, TX |

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| 1:45 pm<br>0.50 hr  | <p><b>Basic Insurance Case Law Update for Construction Lawyers</b></p> <p>Case law update on topics that impact construction law practitioners.</p> <p>Cynthia A. Holub, Porter &amp; Hedges, LLP - Houston, TX</p>   |
| 2:15 pm<br>1.17 hrs | <p><b>The Changing Insurance Market for Construction in 2011: Where We Have Been, Where We Are Going and Why It Matters</b></p> <p>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.</p> <p>Moderator:<br/>Michael W. Huddleston, Shannon, Gracey, Ratliff &amp; Miller LLP - Dallas, TX</p> <p>Panelists:<br/>Jeff Fritts, Willis Group Holdings - Addison, TX</p> <p>Panelists:<br/>Eileen Jenkins, United States Liability Insurance Group - Wayne, PA</p> <p>Panelists:<br/>Paul Primavera, Lockton Companies, LLC - Washington, DC</p> |
| 3:25 pm             | <p><b>Break</b></p>   |
| 3:40 pm<br>0.33 hr  | <p><b>The Certificate of Merit: Overview and Update on Emerging Trends</b></p> <p>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.</p> <p>Thomas John Turner, Cain &amp; Skarnulis LLP - Austin, TX</p>   |
| 4:00 pm<br>0.33 hr  | <p><b>Sales Tax Issues for Construction Lawyers: Common Pitfalls, Pointers and Planning Opportunities</b></p> <p>This session explores how contract terms can affect the sales tax obligations of contractors, subcontractors and customers.</p> <p>Curtis James Osterloh, Scott Douglass &amp; McConnico - Austin, TX</p>  |
|                     | <p><b>The Government Calls - What to Do When ICE or OSHA Shows Up at the Construction Site</b></p>  |
| 4:20 pm<br>0.50 hr  | <p><b>Immigration Issues for Contractors and Subcontractors</b></p> <p>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.</p> <p>John David Smart, Winstead PC - Dallas, TX</p>  |

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| 4:50 pm<br>0.50 hr | <p><b>How to Advise Your Contractor When Occupational Safety and Health Administration (OSHA) Shows Up</b></p> <p>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.</p> <p><b>SCHEDULE CHANGE:</b> This session has moved to 1:00 PM Friday.</p> <p>William Jackson Wisdom Jr., Martin, Disiere, Jefferson &amp; Wisdom, L.L.P. - Houston, TX</p> |
| 5:20 pm            | <p><b>Adjourn</b></p> <p>SCHEDULE CHANGE: The program will now ADJOURN at 5:35 PM.</p>   |

## Friday Morning, Sep. 23, 2011

### Presiding Officer:

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

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| 8:00 am                              | <p><b>Conference Room Opens</b></p> <p>Includes continental breakfast.</p>  |
| 8:30 am<br>1.00 hr<br>0.50 hr ethics | <p><b>Construction Litigation: Identifying the Players and Pressure Points with an Eye Towards the End Game</b></p> <p>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.</p> <p>Moderator:<br/>Cathy Lilford Altman, Carrington, Coleman, Sloman &amp; Blumenthal, L.L.P. - Dallas, TX</p> <p>Panelists:<br/>Lawrence T. Bowman, Cozen O'Connor - Dallas, TX</p> <p>Panelists:<br/>Mark L. Parisi, White and Williams LLP - Philadelphia, PA</p> <p>Panelists:<br/>Craig Michael Schumacher, Carpenter &amp; Schumacher, P.C. - Plano, TX</p> |
| 9:30 am<br>0.67 hr<br>0.25 hr ethics | <p><b>Allocating Liability and Damages in Multiparty Construction Litigation</b></p> <p>A discussion of the complexities of multiparty construction litigation and practical strategies for dealing with those issues.</p> <p>Matthew B. Cano, Allensworth and Porter, LLP - Austin, TX</p> <p>Raymond Douglas Rees, Cooper &amp; Scully, P.C. - Dallas, TX</p>   |
| 10:10 am                             | <p><b>Break</b></p>   |

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| 10:25 am<br>0.83 hr ethics | <p><b>Electronic Discovery and Document Production in Construction Litigation: Costs, Ethics and Privilege Disputes</b></p> <p>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.</p> <p>Moderator:<br/>Jesse K. Shumway, Carrington, Coleman, Sloman &amp; Blumenthal, L.L.P. - Dallas, TX</p> <p>Panelists:<br/>John W. Nassen, Ford Nassen &amp; Baldwin P.C. - Dallas, TX</p> <p>Panelists:<br/>David W. Sandlin, Rimkus Consulting Group, Inc. - Houston, TX</p> |
| 11:15 am<br>0.50 hr        | <p><b>Top 10 Mistakes Litigators Make in Construction Arbitrations</b></p> <p>A look at some of the most common mistakes that impact an arbitrator's understanding of your case and ways to avoid them.</p> <p>Allison J. Snyder, Porter Hedges LLP - Houston, TX</p>  |
| 11:45 am                   | <p><b>Break to Pick Up Lunch</b></p> <p>Included in conference registration fee.</p>   |

## Friday Afternoon, Sep. 23, 2011

### Presiding Officer:

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

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|                     | <b>LUNCHEON PRESENTATION</b>  |
| 12:00 pm<br>0.75 hr | <p><b>Effective Use of Demonstrative Evidence in Construction Litigation</b></p> <p>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.</p> <p>Robert B. McCullough, McCullough &amp; Associates - Dallas, TX</p>              |
| 12:45 pm            | <b>Break</b>  |
| 1:00 pm<br>0.75 hr  | <p><b>Green and Sustainable Building and LEED Certification: Best Drafting Practices to Define and Limit Liability</b></p> <p>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.</p> <p><b>SCHEDULE CHANGE:</b> This session has moved to 4:50 PM Thursday.</p> <p>Commentator:<br/>Dale E. Butler, Winstead PC - Fort Worth, TX<br/>Jason Clay Spencer, Ford Nassen &amp; Baldwin P.C. - Austin, TX</p> |

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| 1:45 pm<br>0.42 hr        | <p><b>Intellectual Property Protection for Architectural Works and Other Designs</b></p> <p>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.</p> <p><b>SCHEDULE CHANGE:</b> This session will now begin at 1:30 p.m. (Friday).</p> <p>Henry "Hank" J. Fasthoff IV, Adams and Reese LLP - Houston, TX</p> |
| 2:10 pm<br>0.50 hr ethics | <p><b>Mediation: What Works?</b></p> <p>A seasoned mediator discusses the most effective, efficient and ethical tools utilized by attorneys during meditations.</p> <p><b>SCHEDULE CHANGE:</b> This session will now begin at 1:55 p.m. (Friday).</p> <p>Corbet F. Bryant Jr., Mediator, Arbitrator and Attorney at Law - Richardson, TX</p>  |
| 2:40 pm                   | <p><b>Adjourn</b></p> <p><b>SCHEDULE CHANGE:</b> The program will now ADJOURN at 2:25 PM.</p>   |