

25TH ANNUAL CONSTRUCTION LAW CONFERENCE



MARCH 1 & 2, 2012
THE WESTIN LA CANTERA RESORT
SAN ANTONIO, TEXAS

Earn up to 15.00 Hours MCLE Credit, including 3.5 Hours Ethics!

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**The Construction Law Section
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25TH ANNUAL CONSTRUCTION LAW CONFERENCE

March 1 & 2, 2012 ♦ The Westin La Cantera Resort ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, FEBRUARY 29, 2012

- 12:30 **GOLF TOURNAMENT** – Shot Gun Start
The Resort Course on the grounds of The Westin La Cantera Resort
- 6:30 **RECEPTION** – In cooperation with the Young Lawyers Council of the Construction Law Section – Sponsored by McCullough & Associates

THURSDAY, MARCH 1, 2012

PRESIDING OFFICER: William B. Short, Jr., Dallas

- 8:00 **LATE REGISTRATION** – Ballroom Foyer, Westin La Cantera Resort, 16641 La Cantera Pkwy., San Antonio, TX 78256, (210) 558-6500
- 8:00 **CONTINENTAL BREAKFAST** – Sponsored by Nelson Architectural Engineers, Inc.
- 8:50 **WELCOME ON BEHALF OF THE CONSTRUCTION LAW SECTION**
Debra R. Ellis, College Station
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.
Gregory M. Cokinos, Houston
- 9:45 **OSHA'S HOT FIVE**
Jeff R. Funke, San Antonio
- 10:15 **BREAK**
- 10:30 **JOINDER AND DISPOSITIVE MOTIONS IN ARBITRATION** – The Panel will discuss the use of joinder, consolidation and dispositive motions in arbitration from the perspective of the claimant, respondent and arbitrator. Issues discussed will include the strategic timing of filing the motions, the management of motion practice in arbitration, impact of the motions on the arbitration and the arbitrator's authority to decide the various motions.
Jeffrey A. Ford, Dallas
David G. Surratt, Dallas
G. Stewart Whitehead, Austin

- 11:15 **FALSE CLAIMS ON FEDERAL PROJECTS: THE PITFALLS OF FEDERAL CONTRACTING** – Contracting with the federal government or doing work on a federal contract can be lucrative but perilous. No more dangerous minefield exists than the risk of submitting a false claim. Come learn about these because even if you are honest that might not be enough to avoid liability.
James F. Nagle, Seattle, WA

- 12:00 **LUNCHEON** – *Tickets available for \$25 each.*
Topic: THEN AND NOW, DOES TEXAS STILL HAVE QUIRKS IN CONSTRUCTION LAW? – Twenty-five years ago, Marc Stanley presented a topic entitled "Quirks in Texas Construction Law" and surveyed areas of Texas jurisprudence that are unique or differ from the rest of the country. The panel will compare the quirks from twenty-five years ago to the state of the law today and see how Texas jurisprudence has changed, or not, over the past twenty-five years.
Andrea A. Hight, Dallas
Marc R. Stanley, Dallas

- 1:15 **INDEMNITY LEGISLATION: MAKING THE SHOE FIT** – The 2011 anti-indemnity legislation went into effect as of 1/1/2012. It takes a relatively simple (or "simplistic") approach to dealing with the issue of indemnity in construction and design contracts. But, Indemnity is far from simple. How will the 2011 legislative approach work given the complexity of indemnity and the wide range of risk which indemnity clauses are designed to address? How does the 2011 legislation change the current "law of indemnity" (particularly the other statutes restricting indemnity) in Texas? What are the questions raised by the new statute and the risks construction lawyers face in trying to push the envelope on indemnity clauses in contracts for their clients? If indemnity is tied to insurance, how will the 2011 legislation change insurance coverage requirements?
Robert C. Bass, Jr., Austin

- 1:45 **INSURANCE LAW UPDATE** – A discussion of recent developments in insurance law as it relates to contractors.
Lee H. Shidlofsky, Austin

- 2:30 **FLOW DOWN CLAUSES FROM THE SUBCONTRACTOR'S PERSPECTIVE: WHAT'S SWUT?** – Many subcontractors have been forced to deal with difficult, over reaching, and often inconsistent requirements through the incorporation of other documents into their agreements. This presentation will review the major problem areas and provide suggested solutions for avoiding these problem areas in the future.
William B. Westcott, Houston

- 3:00 **BREAK**

- 3:15 **FOLLOW THE MONEY** – The pursuit and defense of piercing the corporate veil claims on construction projects.
George Edward Bowles, Dallas

- 4:00 **RESPONSIBLE THIRD PARTY STATUTE** – A strategic discussion on when to use it, what to do when it is asserted, and changes in the law. The topic will also include a review of the requirements for Certificates of Merit and when they are needed.
Hollye C. Fisk, Dallas

- 4:45 **BANKRUPTCY – "FIRST DAY" DAMAGE CONTROL** – Many of the most significant decisions in a bankruptcy occur in the first two weeks after filing. Without careful monitoring and appropriate action your client may find its rights lost or compromised. This presentation will identify key issues and suggest appropriate strategies for protecting your client's rights early in a bankruptcy.
Mark E. Andrews, Dallas

- 5:15 **RECEPTION** – Sponsored by Rimkus Consulting Group, Inc.

FRIDAY, MARCH 2, 2012

- 7:15 **BREAKFAST BREAKOUTS** – *Choose one of three sessions. Open to all registrants on a first-come, first-served basis until all seats are full.*

- Breakout #1** **THE BOND CLAIM – WORKING WITH THE SURETY INSTEAD OF AGAINST IT** – This discussion will focus on the statutory requirements for perfecting payment bond claims under the Texas Government Code and Texas Property Code. It will focus on the various forms of performance bonds and the importance of understanding the requirements imposed by such forms when presenting the surety with a performance bond claim. It will also focus on the importance of effective communication between a bond claimant and the surety in resolving disputed bond claims.
Gregory M. Weinstein, Dallas

- Breakout #2** **OUT OF BOUNDS: THE DALLAS COWBOYS PRACTICE FACILITY COLLAPSE AND THE IMPLIED COVENANT TO BUILD TO CODE** – In Spring 2009, storm winds of only 55 to 65 miles per hour demolished the Dallas Cowboys practice facility. People were permanently injured, property was destroyed, and the devastation could have been worse. A key issue arose during the subsequent dispute over the collapse: did the builder have an implied covenant to ensure the facility complied with local building code? An attorney involved in the case will discuss the implied covenant as applied to the Cowboys case, as well as the covenant's surprising application to owners, contractors, subcontractors, and design professionals in general.
Mason P. Hester, San Antonio

- Breakout #3** **SCHEDULING 101: THE BASICS** – We will approach the basics of scheduling by beginning with a review of CPM schedules and their basic components and types. We will review the standard methods of schedule adjustment (how to establish the number of days of delay) to support claims, with a discussion of the legal baggage that each of them carries. This would include Impacted As Planned, Collapsed As Built, the various forms of Window or Time Impact analysis and the like. Then we will address delay related claims in terms of attaching dollars to the days.
George C. Baldwin, Austin

- 8:00 **CONTINENTAL BREAKFAST**

- 8:30 **BAFFLED BY BIM NO MORE: HOW-TO BASICS OF BUILDING INFORMATION MODELING CONTRACTS**
Kimberly A. Hurtado, Wauwatosa, WI

- 9:15 **MEDIATING THE MULTI-PARTY CONSTRUCTION DEFECT CASE** – Experienced advocates and neutrals discuss timing, pre-mediation preparations, process management, advocacy, the interplay of insurance and insurance coverage issues, and suggestions for a successful result in a multi-party construction defect case. Whether you are the cat herder or one of the cats, you will learn some tricks and traps.
David P. Boyce, Austin
Steven D. Nelson, Austin
Patrick J. Wielinski, Irving

- 1.00 Ethics**

- 10:15 **BREAK**

- 10:30 **THE WITCHING HOUR: LIMITATIONS, REPOSE, TOLLING, AND OTHER HORRORS** – The clock is silently ticking on your cause(s) of action—but how much time do you have left? Help avoid a direct path to a malpractice claim by learning more about the Discovery Rule, the Legal Injury Rule, accrual clauses and other chilling aspects of the statutes of limitations and repose.
Matthew C. Ryan, Austin

- 11:15 **LIEN WAIVERS, RELEASES AND RETAINAGE** – "Howdy. I'm from the Texas Legislature and I'm here to simplify your life." A detailed look at the 2011 Legislation substantially changing your practice in this area, and purporting to simplify mechanic's lien retainage issues, and releases of lien/bond claims. In this discussion we will visit the history and background for the retainage amendments, evaluate the terms of, and potential effect on retainage claims and liability, and examine the terms and impact of the new mandatory, statutory forms of release/waiver.
Thomas J. Walthall, Jr., San Antonio

- 12:00 **LUNCHEON** – *Tickets available for \$26 each.*
Topic: STRATEGIC GROWTH OF A CONSTRUCTION LAW PRACTICE – A common sense, practical approach to building a successful construction law practice in today's competitive business climate. Emphasis on strategic business development plans, marketing assessments, and networking approaches (both online and traditional) that actually work. Panel will include perspectives from a legal marketing professional, seasoned private attorney and general counsel.
William K. Andrews, Houston
Cynthia Birdwell, Houston

- 1.00 Ethics**
- 1:15 **THE PURCHASE ORDER: THE DOCUMENT THAT GETS THE STICKS AND BRICKS TO THE PROJECT** – Contractors typically spend significant amounts of time and money making certain that their contract form provides the best protection possible, but often assume that a two-page Purchase Order will suffice, despite the fact that it is the document pursuant to which critical materials will be delivered to the Project. This presentation will discuss various important and often overlooked provisions of Purchase Orders.
Kimberly Ann Davison, Dallas

HOTEL INFORMATION

25th ANNUAL CONSTRUCTION LAW CONFERENCE March 1 & 2, 2012

The Westin La Cantera Resort • 16641 La Cantera Parkway • San Antonio, TX 78256

A special block of rooms has been reserved at The Westin La Cantera Resort at the special rate of \$209 for single/double. The hotel will release all unused rooms on the **CUTOFF DATE of JANUARY 31, 2012**. When contacting the hotel you must identify yourself as a participant with this conference in order to obtain the special rate in our room block. **Please call the hotel directly at 210/558-6500 to make your reservation.** We recommend that you make your reservations immediately if you plan to attend this course.

REGISTRATION FORM

Mail to: Texas Institute of Continuing Legal Education
25th Annual Construction Law Conference
P.O. Box 4646
Austin, Texas 78765-4646

Online at: www.clesolutions.com

Fax Form to: 512/451-2911 (must be accompanied by American Express, Visa or Mastercard Information)
or Phone: 512/451-6960

Please register me for the conference as follows:

- Regular Pre-Registration Fee (due by 5 p.m. February 17).....\$500.00
- Pre-Registration for Construction Law Section Members.....\$450.00
(due by 5 p.m. February 17)
- Registration *after 5 p.m. February 17 & before 5 p.m. February 24*.....+\$50.00
- Registration *after 5 p.m. February 24* and at the door.....+\$100.00
- Construction Law Section Dues (eligible for the member registration fee)..... \$ 30.00
- ___ Thursday Luncheon Tickets at \$25.00 each.....\$ _____
- ___ Friday Luncheon Tickets at \$26.00 each.....\$ _____

- I will play in the Golf Tournament on Wednesday, February 29, 2012**
Green Fee (includes range balls and shared cart).....\$155.00
My handicap is _____. **Required**

Conference Materials: Choose ONE

Registrants have the option of choosing between electronic or printed versions of the conference materials. Please choose one option below. If you would like to receive both the USB and printed materials, an additional \$54.13 must be included with your registration.

- USB Version (includes hard copies of PowerPoint presentations for note-taking.)
- Printed Version (3-Ring Binder)
- Both USB & Printed Version at \$50 + .0825 tax.....\$54.13

I cannot attend the conference. Please forward the following:

- Audio CDs & course materials (USB *or* Printed) at \$450 + .0825 tax.....\$487.13
- Course materials only (USB *or* Printed) at \$180 + .0825 tax.....\$194.85

TOTAL ENCLOSED.....\$ _____

No refunds after 5:00 p.m. Friday, February 24, 2012. Cancellation policy on back cover.
(Call for Government and Student Discount Information)

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1:45 **AVOIDING E-DISASTERS** – Practical guidance for electronic data management and the e-discovery process.

Heather Elise Asselin, Houston
Thomas R. Barber, League City

2:30 **BREAK**

2:45 **PAY IF PAID CLAUSES: CAN THE SURETY ENFORCE THE CONTINGENCY?** – A contingent payment clause may shift the risk of owner insolvency to a subcontractor in its action against a general contractor. Is the payment bond surety entitled to the same defense? This presentation will discuss Texas' contingent payment statute and case law with respect to a surety's ability to enforce pay if paid clauses.

W. Kyle Gooch, Dallas

3:15 **GOOD FENCES MAKE GOOD NEIGHBORS – OR, WHO'S THE CLIENT, ANYWAY?** – The operations manager of your best client calls, and says his kid was picked up for public intoxication and wants to hire you to beat the charge. Your client's accounting person asks if you can do a "simple will." A charismatic entrepreneur asks for your help forming another company. This ethics segment covers important questions including: "Who is the client?" and "What can I do to keep out of trouble?"

.75
Ethics

Jeffrey R. Jury, Austin

4:00 **ADJOURN**

*25th Anniversary Conference tote bags sponsored by Interface Consulting International, Inc.

**25th Anniversary Conference USB drives sponsored by Synergen Consulting

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25th Annual
Construction Law Conference
March 1 & 2, 2012
The Westin La Cantera Resort
San Antonio, Texas

Cover Art - A Tribute to Byron Fullerton — "Colorado Ranch" is an original by Byron Fullerton from Austin, Texas. Byron's prolific artwork has graced the covers of our conference brochures for 25 years. We were saddened to learn of his passing in the fall of 2011 and continue to honor his memory and artistic talent by featuring this special piece for the 25th Anniversary brochure.

Special Accommodations — If special arrangements are required for a person with a disability to attend this program, please contact us at 512/451-6960.

Visit Our Website — Visit the Construction Law Section's website at www.constructionlawsection.org for information on how to join the Section and access past conference papers.

Pre-Registration — To ensure sufficient materials are available for all attendees, pre-registration is strongly encouraged. Late registration is subject to additional fees.

Online Registration — Visit www.clesolutions.com to register online using a Visa, MasterCard or American Express.

Registration by Telephone — You may register by telephone by calling 512/451-6960 or by fax 512/451-2911. Faxed and phone-in registrations require an AMERICAN EXPRESS, VISA or MASTERCARD number, expiration date and security code.

Cancellations and Refunds — Refunds, less a \$50.00 processing fee, will be given to registrants who cancel by 5:00 p.m. on the Friday preceding the conference. No refunds will be granted thereafter. Course materials and audio CDs will automatically be mailed to prepaid registrants who did not receive a refund and were not able to attend.

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This course has been approved for 15.00 hours credit (including 3.50 hours ethics) which will apply toward MCLE, the College of the State Bar of Texas and the Texas Board of Legal Specialization in the fields of Real Estate Law and Civil Trial Law. You must attend all sessions to receive full credit. MCLE credit is available in other states. Please let us know your needs when you register.

CPAs may obtain 18.00 hours of CPE credit toward licensing with the Texas State Board of Public Accountancy. Sponsor No. 6867.

The Texas Institute of CLE is an accredited sponsor with the Texas Department of Insurance. An application has been filed for approval of 15.00 hours of General credit (all license types) and 3.50 hours ethics. This course is eligible for MCE credit through the Texas Real Estate Commission.



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