

27TH ANNUAL CONSTRUCTION LAW CONFERENCE



FEBRUARY 27 & 28, 2014
THE LA CANTERA HILL COUNTRY RESORT
SAN ANTONIO, TEXAS

Earn up to 14.25 Hours MCLE Credit, including 3.0 Hours Ethics!

Applicable toward MCLE, the College of the State Bar of Texas and the Texas Board of Legal Specialization in the fields of Real Estate Law, Personal Injury Trial Law, Civil Appellate Law and Civil Trial Law. Eligible for Texas Department of Insurance credit and MCE credit through the Texas Real Estate Commission.

Sponsored by:

The Construction Law Foundation of Texas

in cooperation with

**The Texas Institute of
Continuing Legal Education**

27TH ANNUAL CONSTRUCTION LAW CONFERENCE

February 27 & 28, 2014 ♦ The La Cantera Hill Country Resort ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, FEBRUARY 26, 2014

- 12:30 **GOLF TOURNAMENT** – *Shot Gun Start*
The Resort Course on the grounds of The La Cantera Hill Country Resort
- 6:15 **RECEPTION** – In cooperation with the Young Lawyers Council of the Construction Law Section – Sponsored by McCullough & Associates

THURSDAY, FEBRUARY 27, 2014

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

- 8:00 **LATE REGISTRATION** – Ballroom Foyer, The 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**
Matthew C. Ryan, Austin
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.
Gregory M. Cokinos, Houston

- 10:00 **SPOILIATION IN CONSTRUCTION CASES** – A discussion of the evidentiary issue of spoliation and the willingness of Texas courts and others across the nation to impose sanctions for such behavior in the context of construction cases.
Allison J. Snyder, Houston

- 10:30 **BREAK** – Sponsored by Exponent

- 10:50 **DESIGN PROFESSIONALS AND THE ECONOMIC LOSS RULE** – Does contractual privity matter when making claims against engineers and architects for design errors under Restatement (2d) of Torts §552, or under the greatly anticipated Restatement (3d)? A panel provides views from the ivory tower and from the litigation trenches on this developing hot topic.
Moderator: Matthew C. Ryan, Austin
Panelists: C.A. (Joe) Davis, Austin
Dean Ward Farnsworth, Austin
Benton Thomas Wheatley, Austin

- 11:35 **INSURANCE LAW UPDATE** – An update of insurance coverage cases and their impact on construction lawyers.
Lee H. Shidlofsky, Austin

- 12:20 **LUNCHEON** – *Tickets available for \$10 each.*
Topic: BREAKING THE ICE WITH THE JURY – HOW TO RELATE TO JURIES AND GIVE YOUR CASE AND CLIENT A FIGHTING CHANCE TO WIN AT TRIAL – From serving as primary jury consultant in the Terry Nichols, William Kennedy Smith, Robert Durst, Kay Bailey Hutchison, George Zimmerman cases and many others, Robert Hirschhorn has a wealth of experience in jury selection, trial psychology and the ethical implications of jury trials.
Robert B. Hirschhorn, Lewisville

- 1:45 **SURETY OBLIGATION IN THE FACE OF A STRUGGLING CONTRACTOR** – The contractor is in trouble, the surety has cut off bonds, and the creditors are scrambling for money: How do the owner and vendor navigate the pre- and post-petition worlds of the bonded contractor's insolvency?
William K. Andrews, Houston
Thomas R. Barber, League City

- 2:30 **ALTERNATIVES TO ADR** – Construction lawyers embraced arbitration and mediation as "Alternative" Dispute Resolution; now they're standard practice. Add new "alternative" ADR options to your repertoire and achieve closure more quickly.
Curtis W. Martin, Houston

- 3:00 **BREAK** – Sponsored by The Rhodes Group

- 3:20 **NEGOTIATING TRICKY CLAUSES IN PRIME CONTRACTS – SUBCONTRACTORS RESPONSE TO FLOWDOWN OBLIGATIONS** – After exchanging multiple drafts of the proposed prime contract, the owner-general contractor (construction manager) lock themselves in a room to negotiate critical contract terms. Which terms should be the subject of the negotiation and what is the perspective of both parties? We will discuss these items and address the concerns of the parties not in the room – the subcontractors.
Robert C. Bass, Jr., Austin
W. Kyle Gooch, Dallas
Thomas J. Walthall, Jr., San Antonio

- 4:20 **MUD WRESTLING THE 162.001 ISSUE** – A lively debate as to whether Chapter 162 of the Texas Property Code is subject to a broad and liberal construction in order to protect beneficiaries or strict construction as a penal statute with no express civil remedy.
Ben L. Aderholt, Houston
R. Carson Fisk, Austin

- 4:50 **RECEPTION** – Sponsored by Rimkus Consulting Group, Inc.

FRIDAY, FEBRUARY 28, 2014

- 7:00 **CONTINENTAL BREAKFAST** – Sponsored by Interface Consulting International, Inc.

- 7:30 **BREAKFAST BREAKOUTS** – *Choose one of four sessions. Open to all registrants on a first-come, first-served basis until all seats are full.*

- Breakout #1** **METHODS TO AVOID GETTING YOUR CLIENT (AND YOURSELF) TRAPPED IN COVERAGE GAPS** – How are you avoiding coverage gaps? Are your insurance requirements up to code, or is reconstruction needed? Issues to be addressed include identification of current liability and builders risk gaps and recommended solutions.
Charles E. Comiskey, Houston

- Breakout #2** **SID – A NEW STRATEGIC DEFENSE INITIATIVE** – In this market cycle, subcontractor performance risk is a real concern for general contractors. Subcontractor Default Insurance ("SDI") has gained wide acceptance among lenders and even public owners as a creditworthy substitution for subcontractor payment and performance bonds. This presentation will walk through case studies and lessons learned, to help you assess if and when SDI should be utilized, and provide guidance on program collateral and pricing structure, to help hit the program "sweet spot."
Rodney L. Moss, Dallas

- Breakout #3** **EXPEDITED ACTIONS** – For cases involving damages that do not exceed \$100,000, come take a walk through the statutory requirements of the newly enacted Rules for Expedited Actions – TRCP 169, 190.2 and 190.5 – effective March 2013. The discussion will specifically include considerations for contractors of all tiers, the interplay with other construction statutes, and an analysis of the advantages and disadvantages created thereunder.
Shelly D. Masters, Austin

- Breakout #4** **A PRACTICAL CONVERSATION ABOUT E-DISCOVERY** – E-discovery is here to stay and can no longer be thought of as only necessary for the multi-million dollar project, contractor or lawsuit. Whether you represent owners/developers, general contractors, subcontractors, or architects and engineers this presentation will assist you in better managing your client's electronic documents from project inception through anticipation of litigation and document collection. We will also discuss tips for handling the many and varied e-discovery vendors and for the best methods of dealing with an opposing counsel who has little to no e-discovery experience.
Kristen L. Sherwin, Dallas

- 8:30 **TRIAL BY AGREEMENT** – Clients and commentators often criticize the pace, burden, and expense of litigation, principally discovery. They are right. Many lawyers seem to engage in discovery for the sake of engaging in discovery. Opposing counsel fight bitter fights over discovery issues that have no bearing on the results of the case. All too often the fruits of discovery turn out to be wasted – unused or unusable at trial. Steve Susman has been in the vanguard of leading a change to simplify litigation and greatly lessen its cost. His proposals, known as the "Susman Agreements," are being widely adopted by trial lawyers or required by courts and rule makers.
Steven D. Susman, Houston

- 9:15 **THE TEXAS CONSTITUTIONAL LIEN SIMPLIFIED** – The Texas Constitutional Lien, on its face, is simple. However, 100 years of case law and legislation have led to a number of confusing aspects. Here we have gathered and digested this case law and legislation to hopefully bring clarity back to Constitutional Lien practice and procedure.
J. Paulo Flores, Dallas

- 9:45 **BREAK** – Sponsored by Spire Consulting Group, LLC

- 10:05 **ATTORNEYS FEES IN CONSTRUCTION CASES** – Can attorneys be penalized for block billing? May work by a general contractor's in-house counsel be recovered as attorney's fees? Can a subcontractor recover its attorney's fees for a claim against a non-statutory bond or letter of credit? May a construction surety be liable for attorney's fees even when they exceed the bond's penal sum? Texas courts and other authorities have provided answers to these and other questions. Those answers may surprise you. The goal of this presentation is a comprehensive analysis and update of multiple attorney's fees issues in Texas construction cases.
Ian P. Faria, Houston

- 10:50 **BEHIND THE SCENES OF A MAJOR CONSTRUCTION DEFECTS CASE** – CGL coverage litigation issues and strategies, a panel discussion.
David P. Boyce, Austin
R. Brent Cooper, Dallas
David D. Peden, Jr., Houston

- 11:35 **ANTI-INDEMNITY COVERAGE ISSUES** – This presentation looks at the effect of Chapter 151 by addressing the complexities of the statute, including its application to additional insured coverage.
Patrick J. Wielinski, Irving

- 12:05 **LUNCHEON** – *Tickets available for \$11 each.*
Topic: USE OF TECHNOLOGY IN YOUR PRACTICE – Lawyers are quickly integrating technology and fundamentally changing the way they practice law. Lawyers should embrace technology and decide what works best for them. We'll discuss some of the things available.
Paul Malouf, Dallas

- 1:20 **EXAMINATION OF EXPERTS – DIRECT AND CROSS** – This interactive presentation is a trial demonstration. An expert witness will be presented and cross examined. The mock water leak litigation involves common scope, construction and design issues.
Judge/Arbitrator: George E. Bowles, Dallas
Direct: Jason C. Spencer, Austin
Cross: Lawrence T. Bowman, Dallas
Expert: George C. Baldwin, Austin

- 2:20 **BREAK** – Sponsored by FTI Consulting, Inc.
- 2:35 **WHEN IS THE COFFEE TOO HOT??? – PRODUCT LIABILITY ISSUES IN CONSTRUCTION DEFECT LITIGATION** – This presentation addresses product liability issues that arise in construction defect litigation

HOTEL INFORMATION

27th ANNUAL CONSTRUCTION LAW CONFERENCE February 27 & 28, 2014

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

A special block of rooms has been reserved at The La Cantera Hill Country Resort at the special rate of \$209 for single/double. The hotel will release all unused rooms on the **CUTOFF DATE of JANUARY 31, 2014**. 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
27th 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 14).....\$500.00
- Pre-Registration for Construction Law Section Members.....\$450.00
(due by 5 p.m. February 14)
- Registration *after 5 p.m. February 14 & before 5 p.m. February 21*.....\$+50.00
- Registration *after 5 p.m. February 21* and at the door.....\$+100.00
- Construction Law Section Dues (eligible for the member registration fee)..... \$ 30.00
- ___ Thursday Luncheon Ticket at \$10 each..... \$ _____
- ___ Friday Luncheon Ticket at \$11 each..... \$ _____
- I will play in the Golf Tournament on Wednesday, February 26, 2014**
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 21, 2014. Cancellation policy on back cover. (Call for Government and Student Discount Information)

Name _____

Firm _____

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Make Check Payable to: Texas Institute of Continuing Legal Education

Please Charge: AMERICAN EXPRESS VISA MASTERCARD

Card No. _____ Exp. Date _____

Name on Card (Please Print) _____

Security Code: (3 digit code on MC/Visa, 4 digit code on AmEx): _____

Billing Address (including zip): _____

Authorized Signature _____

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including the scope of discovery on alleged product defects, evidentiary hurdles to introducing evidence of defects, limitations on recovery presented by the economic loss doctrine, the impact of the Texas Product Liability Act (TEX. CPRC 82.002), and the dynamics of product liability trials.

John W. Slates, Dallas

3:05 **ETHICAL CONSIDERATIONS OF JOINT REPRESENTATION** – Can I represent more than just one? A discussion of joint representation in construction cases including representation of joint ventures, representation of both contractor and surety and joint defense agreements.

.75 Ethics

Martha Crandall Coleman, Dallas

3:50 **ADJOURN**

Annual Conference Sponsors also include:

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