

28TH ANNUAL CONSTRUCTION LAW CONFERENCE



MARCH 5 & 6, 2015
SAN ANTONIO MARRIOTT RIVERCENTER
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The Construction Law Foundation of Texas

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The Construction Law Section of the State Bar of Texas

in cooperation with

The Texas Institute of Continuing Legal Education

28TH ANNUAL CONSTRUCTION LAW CONFERENCE

March 5 & 6, 2015 ♦ San Antonio Marriott Rivercenter ♦ 101 Bowie Street ♦ San Antonio, Texas 78205

WEDNESDAY, MARCH 4, 2015

- 12:30 **GOLF TOURNAMENT** – *Shot Gun Start*
The Palmer Course on the grounds of The La Cantera Hill Country Resort (*Transportation from the San Antonio Marriott Rivercenter will be provided.*)
- 6:15 **RECEPTION** – In cooperation with the Young Lawyers Council of the Construction Law Section – Sponsored by McCullough & Associates

THURSDAY, MARCH 5, 2015

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

- 8:00 **LATE REGISTRATION** – Ballroom Foyer, San Antonio Marriott Rivercenter, 101 Bowie Street, San Antonio, TX 78205, (210) 223-1000
- 8:00 **CONTINENTAL BREAKFAST** – Sponsored by Nelson Forensics
- 8:50 **WELCOME**
William W. Sommers, San Antonio
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.
Gregory M. Cokinos, Houston
- 9:50 **NO DAMAGE FOR DELAY? NOT SO FAST!** – An in-depth examination of the 2014 landmark decision by the Texas Supreme Court in *Zachry v. Port of Houston* which will cover waiver of governmental immunity for delay claims, exceptions to the enforceability of no damage for delay clauses and the extent to which interim waivers may bar claims for remission of liquidated damages.
Jeffrey A. Ford, Dallas
- 10:20 **BREAK** – Sponsored by Exponent
- 10:45 **THE ECONOMIC LOSS RULE AFTER EBY** – For several years, the construction industry has debated whether a contractor can sue a design professional for negligent misrepresentation to recover purely economic losses. In June 2014, the Texas Supreme Court clearly and emphatically answered that question “No.” This presentation examines that opinion and what it means for the construction industry.
Bradley W. Snead, Houston

- 11:15 **ARCHITECT, CONTRACTOR & PROJECT MANAGER - THREE'S A CROWD?** – This session will describe the emerging role of Project Management firms in the construction process. The benefits of using a Project Management professional will be discussed along with whom they may owe obligations to, the nature of the services they provide, potential insurance coverages and approaches to indemnity.
Denis George Ducran, Houston
Brian R. Gaudet, League City

- 12:00 **LUNCHEON** – *Tickets available for \$25 each.*
Topic: THE ART OF WAR – Sun-Tsu military treatise written over two-thousand years ago is still applicable as to the modern battlefield as it is modern litigation. With this back-drop, we will explore the ancient Chinese wisdom and its interplay with the equally mysterious Texas Rules of Disciplinary Procedure.
Brian Keith Carroll, Temple
Fred D. Wilshusen, Dallas

PRESIDING OFFICER: Jason C. Spencer, Austin

- 1:30 **SHOW ME THE MONEY! CONSTRUCTION DAMAGES: WHAT CAN YOUR CLIENT RECOVER AND HOW?** – Whether negotiating a contract, preparing a claim for filing, or evaluating a claim for settlement, the client wants to know: what can I recover or what might I have to pay? We will discuss the claims available and damages that can be recovered by (or from) construction litigants, and pleading, proving and pricing your client's claim.
J. Matthew Shadonix, Frisco

- 2:15 **RESOLVING LIEN/BOND CLAIMS** – So you perfected your claim, when does the money arrive? How to help get your client paid after you've perfected the claim.
Richard E. Schellhammer, Fort Worth
- 3:00 **BREAK** – Sponsored by The Rhodes Group
- 3:20 **BIM(BUILDINGINFORMATIONMODELING)** – What is BIM? What does it look like? What are the legal considerations? The presentation will include a demonstration of what a model looks like, what it can do and how it is used followed by a discussion of the legal considerations involved.
Marty Crandall Coleman, Dallas
Thomas Hook, Fort Worth

- 4:05 **SMOKING SMART PHONES AND OTHER DEVICES THAT CAN MAKE OR BREAK YOUR CASE** – Everyone has a smart phone these days and new technology is being used and implemented in a variety of ways on construction projects, including the use of drones. This discussion will highlight some of the current technology and devices being used on construction projects and the practical implications on your case.
Calley Dawn Callahan, Austin
- 4:35 **NEVER CAN SAY GOODBYE: LONERGAN REAFFIRMED BY TEXAS SUPREME COURT 100 YEARS LATER** – After more than one hundred years, the Texas Supreme Court reaffirmed the rule announced in *Loneragan v. San Antonio Loan & Trust Co.* that an owner of a project does not impliedly warrant the sufficiency of plans and specifications to a contractor. In *El Paso Field Servs. v. Mastec North America, Inc.*, the Texas Supreme Court upheld the minority rule in American jurisprudence reasoning that in order for an owner to be liable to a contractor for a breach of contract based on faulty construction specifications, the contract must contain a provision obligating the owner to guaranty the sufficiency of the plans.
Amy K. Wolfshohl, Houston
- 5:05 **RECEPTION** – Sponsored by Rimkus Consulting Group, Inc.

FRIDAY, MARCH 6, 2015

PRESIDING OFFICER: Laird E. Lawrence, Dallas

- 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** **PRACTICAL USE AND PROBLEMS OF TECHNOLOGY IN THE COURTROOM** – How flashy can you or do you want to be?
Brad W. Gaswirth, Dallas
Sean Hanko, Austin

- Breakout #2** **MAKING IT RAIN WITHOUT GETTING SOAKED: MARKETING FOR NEW LAWYERS** – This session will review some of the time tested strategies to help you get new clients, new business with existing clients, and balance billable hour requirements with time spent on marketing efforts.
John C. Warren, Houston
William B. Westcott, Houston

- Breakout #3** **NUTS AND BOLTS OF INSURANCE COVERAGE FOR CONSTRUCTION DEFECT CASES** – An inside look at the ins and outs of insurance for construction defect cases, including “Do’s” and “Don’ts,” recent developments involving coverage for breach of contract claims, and how to manage the all-important tripartite relationship between contractor, insurer and defense counsel.
Douglas P. Skelley, Austin

- Breakout #4** **PUBLIC-PRIVATE PARTNERSHIPS: HOW TO SECURE THE PAYMENT** – Tips and strategies for securing payments from letters of credit filed for public-private partnerships.
Cara D. Kennemer, Fort Worth

- 8:15 **LEGISLATIVE UPDATE** – An update on the construction related bills filed (to date) in the 84th Regular Legislative Session, as well as a discussion of the anticipated construction related issues that are likely to be addressed.
Robert C. Bass, Jr., Austin

- 8:45 **CLAIMS AGAINST ARCHITECTS/ENGINEERS** – The path to recovery against a design professional is fraught with danger. Important practical considerations for Plaintiff's counsel.
Marc E. Gravelly, San Antonio

- 9:15 **ARCHITECT/ENGINEER DEFENSE IN PRACTICE**
Matthew B. Cano, Austin

- 9:45 **ENERGY PROJECT CONSTRUCTION MEANS EPC** – EPC contracts remain the owner's preferred contracting strategy on energy infrastructure projects. This presentation provides an overview of the major risk allocation provisions, compensation schemes, and performance standards in the latest generation of EPC contracts in the energy industry and contrasts those provisions with other contracting strategies.
Derrick B. Carson, Houston

- 10:30 **BREAK** – Sponsored by Spire Consulting Group, LLC

- 10:45 **THERE'S NO CRYING IN BASEBALL, OR IS THERE: FAIRNESS EXCEPTIONS IN CONSTRUCTION CONTRACTS** – Texas contractors can generally expect courts to enforce construction contracts as written, with full freedom to contract, but from time to time fairness dictates otherwise. This presentation explores circumstances when construction contracts have been determined unenforceable due to fairness.
Timothy C. Ross, Houston

- 11:30 **INSURANCE LAW UPDATE** – A survey of important developments in Texas insurance law and how those developments impact construction lawyers.
Lee H. Shidlofsky, Austin

- 12:05 **LUNCHEON** – *Tickets available for \$26 each.*
Topic: ETHICAL CONSIDERATIONS IN MARKETING AND ADVERTISING SPECIALIZATION – Understanding the certification process, marketing/advertising considerations for certification, applicable disciplinary rules, and proper use of graphic designs.
Gary W. McNeil, Austin

PRESIDING OFFICER: Jeffrey R. Jury, Austin

- 1:15 **MO' MONEY, NO PROBLEMS: ETHICAL BILLING THAT GETS YOU PAID AND KEEPS YOUR CLIENTS HAPPY** – A discussion of timekeeping's ethical parameters and special billing requirements for working with insurance companies. This discussion also ventures into the in-house counsel perspective on attorneys' fees invoices and new software your clients may be using to track and compare your efficiency, billing transparency and client satisfaction against other counsel.
David P. Boyce, Austin
Steve Doyle, Dallas
Danielle N. Senn, Irving

- 2:00 **CAUSES OF ACTION 2015** – When a project goes awry, who is liable for construction defects? The owner, contractor, subcontractor, design professional? All the above? This speech will cover recent critical shifts in the way Texas courts handle traditional causes of action, as well as non-traditional claims that parties might not typically consider, along with practical advice for attorneys and their clients.
Mason P. Hester, Houston

- 2:45 **BREAK** – Sponsored by FTI Consulting, Inc.

HOTEL INFORMATION

28th ANNUAL CONSTRUCTION LAW CONFERENCE • March 5 & 6, 2015
San Antonio Marriott Rivercenter • 101 Bowie Street • San Antonio, TX 78205

A special block of rooms has been reserved at the San Antonio Marriott Rivercenter at the special rate of \$189 for single/double. The hotel will release all unused rooms on the **CUTOFF DATE of FEBRUARY 6, 2015**. When contacting the hotel you must identify yourself as a participant with this conference and the Texas Institute of CLE in order to obtain the special rate in our room block. **Please call the hotel reservation line at (800) 648-4462 to make your reservation.** We recommend that you make your reservations immediately if you plan to attend this course.

Parking: Onsite self-parking is complimentary for conference attendees, however availability is limited and oversized vehicles are not permitted. Valet parking is \$37 per day plus tax.

REGISTRATION FORM

Mail to: Texas Institute of Continuing Legal Education
 28th 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 13).....\$500.00
- Pre-Registration for Construction Law Section Members.....\$450.00
 (due by 5 p.m. February 13)
- Registration *after 5 p.m. February 13 & before 5 p.m. February 27*.....\$+50.00
- Registration *after 5 p.m. February 27* and at the door.....\$+100.00
- Construction Law Section Dues (eligible for the member registration fee)..... \$ 30.00

___ Thursday Luncheon Ticket at \$25 each..... \$ _____
 ___ Friday Luncheon Ticket at \$26 each..... \$ _____
 ___ # of "Folds of Honor" Raffle Tickets* (*\$10 each or 3 for \$25*)..... \$ _____

- I will play in the Golf Tournament on Wednesday, March 4, 2015**
 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 27, 2015. Cancellation policy on back cover. (Call for Government and Student Discount Information)

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Authorized Signature _____

SEND THIS FORM TO TEXAS INSTITUTE OF C.L.E.

3:00 INSURANCE MYTHS & MISCONCEPTIONS –
 The presentation will address commonly held myths and misconceptions regarding insurance coverage, ranging from the basic (requiring worker's compensation as required by law) to the complex (CIP enrollment is easy and safe), from myths (we don't need USL&H coverage) to misconceptions (what the heck is casualty insurance anyway?) and offer insights into actions that should be taken.
 Charles E. Comiskey, Houston

3:45 TEN THINGS EVERY CONSTRUCTION LAWYER NEEDS TO KNOW ABOUT EMPLOYMENT LAW –
 The ten issues that most construction lawyers are not aware of that impact your clients, including prevailing wage issues, wage and hour issues, restrictive covenants, confidentiality policies, and personal liability issues.
 Karen Kohler Fitzgerald, Dallas

4:15 ADJOURN

Annual Conference Sponsors also include:
 * **Notepads** – Sponsored by Bert L. Howe & Associates, Inc.
 * **Name Badge Lanyards** – Sponsored by HSSK
 * **Tote Bags** – Sponsored by Synergen Consulting
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<i>Marc E. Gravely, San Antonio</i> Gravely & Pearson, L.L.P.	<i>Amy K. Wolfshohl, Houston</i> Porter Hedges LLP

Marc E. Gravely, San Antonio
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**28th Annual
Construction Law Conference**
March 5 & 6, 2015
**San Antonio Marriott Rivercenter
San Antonio, Texas**

Cover Art - Courtesy of Sebastian Stutz — "Chestnut Treasure" is an original piece by Sebastian Stutz (www.sebastianstutz.com). Sebastian generously donated this painting to the Folds of Honor Foundation raffle and fundraiser being held in conjunction with the 28th Annual Conference.

***Folds of Honor** — We are proud to once again partner with *The Folds of Honor Foundation* to offer raffle tickets for your chance to win great prizes during the conference. All raffle proceeds benefit The Folds of Honor Foundation and their mission to provide scholarship assistance to the spouses and children of soldiers killed or wounded in service to our country.

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

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 a Visa, MasterCard or American Express 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.

2015 PLANNING COMMITTEE
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Denis G. Ducran, Houston	Jason C. Spencer, Austin
J. Paulo Flores, Dallas	<i>Past Section Chairs:</i>
Mason P. Hester, Houston	William K. Andrews, Houston
Jeffrey R. Jury, Austin	David D. Peden, Jr., Houston

This course has been approved for 14.75 hours credit (including 2.75 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, Personal Injury Trial Law, Civil Appellate 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 up to 17.70 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 submitted for 12.00 hours of General credit (all license types) and 2.50 hours ethics. This course is eligible for MCE credit through the Texas Real Estate Commission.



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