

23RD ANNUAL CONSTRUCTION LAW CONFERENCE



FEBRUARY 25 & 26, 2010
THE WESTIN LA CANTERA RESORT
SAN ANTONIO, TEXAS

Sponsored by:

**The Construction Law Section
of the State Bar of Texas**

in cooperation with

The Texas Institute of Continuing Legal Education

23RD ANNUAL CONSTRUCTION LAW CONFERENCE

February 25 & 26, 2010 ♦ The Westin La Cantera Resort ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, FEBRUARY 24, 2010

- 12:30 **GOLF TOURNAMENT** – Shot Gun Start
The Resort Course on the grounds of The Westin La Cantera Resort
- 7:00 Young Lawyers Reception - Sponsored by Synergen Consulting

THURSDAY, FEBRUARY 25, 2010

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

- 8:00 **LATE REGISTRATION** – Ballroom Foyer, Westin La Cantera Resort
16641 La Cantera Parkway, San Antonio, TX 78256, (210) 558-6500
- 8:00 **CONTINENTAL BREAKFAST**
- 8:50 **WELCOME ON BEHALF OF THE CONSTRUCTION LAW SECTION**
Richard W. Wiseman, Fort Worth
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments
impacting the construction industry.
Joseph F. Canterbury, Jr., Dallas
- 9:45 **RESIDENTIAL CONSTRUCTION LAW UPDATE** – It's a new old
world out there: The Legislature has sent the TRCCA off into the sunset.
However, did the Act end at midnight of 8/31/09; will it come to an end at
midnight of 8/31/2010; or some combination? The Chair of the TRCC will
share his thoughts on the current status of residential construction law.
J. Paulo Flores, Dallas
- 10:15 **BREAK** - Sponsored by Nelson Architectural Engineers, Inc.
- 10:30 **INSURANCE UPDATE** – An update on the top insurance cases of
2009 that affect construction law practitioners as well as a discussion
of important cases that are in the pipeline.
Lee H. Shidlofsky, Austin
- 11:15 **WORKSITE TRAGEDIES** – Guiding a client through the aftermath
of a worksite tragedy: How to coordinate multiple legal disciplines
involving often-conflicting principles of tort, contract and employment
law, insurance coverage, safety, health and environmental regulatory
enforcement actions and criminal investigations; Attention to ethical
dilemmas that frequently arise, and ways to deal with them.
Keith Coulter, Houston
- 12:00 **LUNCHEON** - Tickets may be purchased for \$25 each.
Topic: GETTING THE BUSINESS – The ethics of marketing,
advertising, and rainmaking in a down economy.
Speaker: William J. Chriss, Austin
- 1:15 **CONSEQUENTIAL AND DAMAGES FOR DELAY** – A review of
contractual devices to waive, limit, or to liquidate damages, including
legal and practical limitations on their use.
William R. Allensworth, Austin
- 1:45 **ARBITRATION PANEL** – Three knowledgeable and experienced
arbitrators will share their views on a variety of topics that arise
in arbitration, including what constitutes effective arbitration
presentation, the role of dispositive motions, limiting discovery and
running a cost effective and efficient process and what persuades
arbitrators. Conference participants will be invited to submit
questions for the panel to review.
Moderator: George C. Baldwin, Austin
Panelists: Frank McFadden, Montgomery, AL
Allison J. Snyder, Houston
Stephen K. Yungblut, Arlington
- 2:45 **BREAK** - Sponsored by Haag Engineering
- 3:00 **DOWN AND DIRTY AGREEMENTS** – Design and Construction
Contracts for "Small Projects". Contracting for smaller projects
can pose unique problems for owners, design professionals and
contractors. The risk/reward ratio is quite different for smaller projects
because the "risks" are not necessarily tied to the monetary size of
the contract, but the "rewards" are. This paper will discuss design
and construction contracts for smaller projects from an owner's
perspective that are appropriate in scale and fairly allocate risk – for
both sides of the respective contract.
Robert C. Bass, Jr., Austin
- 3:45 **NEGLIGENT MISREPRESENTATION CLAIMS AGAINST
DESIGN PROFESSIONALS** – When does bad design become
a negligent misrepresentation? Survey of current authority on a
contractor's right to seek recourse against design professionals
under the theory of negligent misrepresentation. Discussion will also
cover elements of the negligent misrepresentation cause of action,
applicability of the economic loss doctrine, comparative negligence
and recoverable damages.
Jeffrey A. Ford, Dallas

- 4:15 **MANAGING RISK IN AN UNCERTAIN ENVIRONMENT** –
A discussion of the legal, business, and operating problems facing
contractors and owners in the current unfavorable economic climate,
and the practices necessary for survival. What are the appropriate
legal risks to take in an atmosphere of reduced rewards, and what
are the available risk management tools? Review and consider new
perspectives on specific Texas statutory and legal rights, and remedies
available to the parties for their protection.
Michael F. Albers, Dallas

- 5:00 **RECEPTION** – Sponsored by Rimkus Consulting Group, Inc.

FRIDAY, FEBRUARY 26, 2010

- 8:00 **CONTINENTAL BREAKFAST**
- 8:30 **LEGISLATIVE UPDATE** – Update on legislation of interest to the
construction industry that either passed or failed in the last Texas
Legislative Session: Trust Fund Statute Revisions, Attorneys' Fees
Recovery against Public Owners, Demise of the Texas Residential
Real Estate Commission, and a discussion of the Anti-Indemnity Bill
and Alternative Delivery bills that didn't make it and will probably be
seen again.
Steven D. Nelson, Austin
- 9:15 **NEWS AND GOODS? OR, OLDS AND AWFULS? Hammers, Nails
and Levels: The American Recovery and Reinvestment Act, and an
Update on Contractor Ethics** – Put your hard hat, boots and safety
glasses on! The American Recovery and Reinvestment Act ("ARRA")
and its impact on Texas construction contractors will be reviewed.
Examine selected issues stemming from ARRA that are of interest to
Texas construction law practitioners and get the latest developments
in the area of mandatory disclosure and contractor ethics.
Joan Kelley Fowler Gluys, San Antonio
- 9:45 **SMALL BUSINESS PROGRAMS, DOMESTIC PREFERENCE
AND LABOR POLICIES IN FEDERAL AND STATE
PROCUREMENT** – How does the Small Business Administration
Minority/Small Business Program Work? Is the Texas Historically
Underutilized Business Program similar? What is the Buy American
Act? Does it have a counterpart in Texas public procurement? What
is the Davis Bacon Act? A survey of current statutes and authority
provide a basic understanding of the various federal and Texas
programs dealing with small or minority-owned businesses, how the
Buy America Act works and prevailing wage labor rates for various
federal and Texas public procurements.
Timothy D. Matheny, Dallas
- 10:15 **BREAK** – Sponsored by McCullough & Associates
- 10:30 **TIPS FROM THE BENCH** – Want to know what experienced judges
think of your advocacy skills? Listen up! Hear tips and traps of trying
a construction case, as seen from the bench.
Moderator: Gregory M. Cokinos, Houston
Panelists: Honorable John A. Coselli, Houston
Honorable Karen Pozza, San Antonio
Honorable Randy Wilson, Houston
- 11:30 **CONTRACT CLOSEOUT – IF YOU BUILD IT, WILL THEY PAY?**
A discussion of construction contract closeout requirements and "hot
buttons" from the contractor's perspective.
Tonya Johannsen, Dallas
- 12:00 **LUNCHEON** - Tickets may be purchased for \$26 each.
Topic: THE ETHICS BUFFET – A luncheon discussion serving small
portions of ethics information covering a tasty variety of topics for
the construction lawyer. All you can eat. Antacids will be available.
Speaker: Jeffrey R. Jury, Austin
- 1:15 **BUILDER'S RISK** – A discussion of builders' risk requirements and
strategies.
Charles E. Cominsky, Houston
- 2:00 **SO YOU THOUGHT YOU WERE JUST A CONTRACTOR** –
Performance specs; Shop Drawings; Value Engineering; Failure to
catch design errors by architect; Compliance with laws (i.e. building
codes) which could be argued to exceed means methods; insurance
coverage; suggested limitation of liability clauses.
W. Kyle Gooch, Dallas
- 2:45 **MECHANIC'S LIENS – FROM CRADLE TO GRAVE** – A discussion
of the mechanic's lien laws focusing on inception and the relation back
doctrine and the actual foreclosure process. The discussion will also
address what materials qualify as removables, how to foreclose them
and what rights they afford a claimant.
Fred D. Wilshusen, Dallas
- 3:30 **ADJOURN**

This course has been approved for 13.75 hours credit (including 3.25 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 for the conference.

CPAs may obtain 16.50 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 13.75 hours of General credit (all license types) and 3.25 hours ethics. This course is eligible for MCE credit through the Texas Real Estate Commission.

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Not a Construction Law Section Member?

Join now to register at the member rate.

You save \$50!

Check the appropriate box on the registration form and include the dues with your payment.

HOTEL INFORMATION

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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 \$198 for single/double. The hotel will release all unused rooms on the **CUTOFF DATE of JANUARY 31, 2010**. 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
23rd Annual Construction Law Conference
P.O. Box 4646
Austin, Texas 78765-4646

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

Please register me for the conference as follows:

- Regular Pre-Registration Fee (due by 5 p.m. February 12).....\$450.00
 Pre-Registration for Construction Law Section Members.....\$400.00
 (due by 5 p.m. February 12)
 Registration after 5 p.m. February 12 & before 5 p.m. February 19.....\$+50.00
 Registration after 5 p.m. February 19 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 24, 2010
 Green Fee (includes range balls and shared cart).....\$140.00
 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 CD and printed materials, an additional \$54.13 must be included with your registration.

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

I cannot attend the conference. Please forward the following:

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

TOTAL ENCLOSED.....\$ _____

**No refunds after 5:00 p.m. Friday, February 19, 2010. Cancellation policy on back cover.
(Call for Government and Student Discount Information)**

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San Antonio, Texas

Cover Art — "Grandpa's Barn" is an original by Byron Fullerton from Austin, Texas.

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.

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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