

31ST ANNUAL CONSTRUCTION LAW CONFERENCE



MARCH 1 & 2, 2018
THE LA CANTERA RESORT & SPA
SAN ANTONIO, TEXAS

Earn up to 13.75 Hours MCLE Credit, including 3.25 Hours Ethics!

Applicable toward MCLE, the College of the State Bar of Texas and the Texas Board of Legal Specialization in the fields of Construction Law, 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
&**

The Construction Law Section of the State Bar of Texas

in cooperation with

The Texas Institute of Continuing Legal Education

31ST ANNUAL CONSTRUCTION LAW CONFERENCE

March 1 & 2, 2018 ♦ The La Cantera Resort & Spa ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, FEBRUARY 28, 2018

- 12:30 **GOLF TOURNAMENT** – *Shot Gun Start*
The Resort Course at The La Cantera Resort
- 3:30 **TEXAS WOMEN'S CONSTRUCTION LAW GROUP FORUM** – The TWCLG will host a marketing workshop with Deborah Todd from Consensus Marketing, LLC, followed by a networking reception. – Sponsored by Veritas Advisory Group, Inc.
- 6:15 **RECEPTION** – In cooperation with the Young Lawyers Council of the Construction Law Section – Sponsored by McCullough & Associates

THURSDAY, MARCH 1, 2018

PRESIDING OFFICER: George E. Bowles, 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 Forensics, LLC
- 8:50 **WELCOME ON BEHALF OF THE CONSTRUCTION LAW SECTION**
Richard P. Flake, Houston
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.
Gregory M. Cokinos, Houston
- 10:00 **NOTICE ANYTHING? IS MY \$50 MILLION DAMAGE CLAIM REALLY BARRED BECAUSE I FAILED TO SEND THE CONTRACTUALLY REQUIRED NOTICE WITHIN SEVEN DAYS?** – What owners, contractors, subcontractors, and design professionals need to know about contractual notice provisions in light of recent Texas case law.
Kristen L. Sherwin, Dallas

- 10:30 **BREAK** – Sponsored by The VERTEX Companies, Inc.
- 11:00 **TRIAL DEMONSTRATION: ZACHRY V. PORT OF HOUSTON OPENING STATEMENT** – Ever wonder how you get a jury's blood up in a construction case? Robin Gibbs, Zachry's lead trial lawyer, will give his opening statement in the *Zachry v. Port of Houston* case and share his secrets on how to make an effective and compelling opening statement in a jury trial, arbitration or bench trial.
George E. Bowles, Dallas
Robin C. Gibbs, Houston

- 12:00 **LUNCHEON** – *Discounted tickets available for \$16 each.* Sponsored by Interface Consulting International, Inc.

1.00 Ethics
Topic: ETHICAL ISSUES FOR LAWYERS IN THE CLOUD INCLUDING CYBER RISKS
Peter S. Vogel, Dallas

PRESIDING OFFICER: David P. Boyce, Austin

- 1:30 **INSURANCE UPDATE** – An update on recent insurance cases that impact the construction industry.
Patrick J. Wielinski, Irving
- 2:00 **OCIP OR CCIP EXCLUSIVE REMEDY** – A general contractor can provide workers compensation insurance to its subcontractors and their employees and gain the benefit of exclusive remedy protection under the Texas Workers Compensation Act. Does that exclusive remedy always extend to workers compensation provided by an owner or general contractor to contractors and subcontractors enrolled in a Controlled Insurance Program?
Jessica Z. Barger, Houston
- 2:30 **ELECTION OF REMEDIES** – A discussion regarding an owner's election to seek the recovery of repair costs versus diminution in value damages and the impact of the classification of the injury as temporary versus permanent. The discussion will also cover evidentiary issues including the utilization of valuation experts.
M. Brandon Waddell, Dallas

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

CONCURRENT SESSIONS - Choose Sessions A or B

Sessions A

3:30 **THE STOWERS DOCTRINE IN CONSTRUCTION LITIGATION** – A discussion about how *Stowers* impacts insurance coverage and limits of liability in construction litigation and drives strategy decisions and settlement negotiations. The panel discussion will include considerations related to settlement demands, layers of coverage, multi-party and additional insured issues and expense within limits problems in claims against design professionals.
David P. Benjamin, San Antonio
Erika L. Bright, Dallas
Richard A. Capshaw, Dallas

4:15 **CAN I SAY THAT?** – How to avoid inadvertently becoming a fact witness and/or getting sued for libel/slander while representing construction clients.
.50 Ethics
Clayton C. Utkov, Austin

4:45 **BUT I NEED TO KNOW** – Pre-suit discovery and other non-litigation discovery tools.
Brian K. Carroll, Temple

Session B

3:30 **THE BIG HURT** – In recent years, Texas has been pummeled with floods, wildfires, hurricanes, tornadoes and hail storms. Both residential and commercial clients are asking questions. Do you know how to respond? This session will explore natural disaster legislation, common law and administrative issues related to insurance, FEMA, contractual issues, and governmental takings.
.50 Ethics
Moderator: Ian P. Faria, Houston
Panelists: Christopher S. Johns, Austin
James R. Old, Jr., Beaumont
James W. Rudnicki, Austin

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

FRIDAY, MARCH 2, 2018

7:00 **CONTINENTAL BREAKFAST**

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
BID PROTEST PRIMER AND CURRENT TRENDS – This presentation will review the basics of state and federal contracting bid protests. Emerging trends and new developments have introduced additional bid compliance and protest features, such as joint venture arrangements and good faith compliance with MBE/WBE subcontracting goals.
Paul H. Sanderford, Temple

Breakout #2
ARBITRATION OF MULTI-PARTY CONSTRUCTION DISPUTES – Experienced arbitrators will discuss thorny issues that often arise in multi-party construction arbitrations such as: joinder of parties; managing the discovery process; efficient presentation of evidence; the effect of responsible third-party designations; the economic loss rule; and apportionment and segregation of damages in the award.
Moderator: Jerry Hoover, Houston
Panelists: Hon. Anne Ashby (Ret.), Dallas
Paula Fisher Baldwin, Austin
Clayton C. Cannon, Houston

Breakout #3
TWEETING THROUGH THE CONDO ACT: KEY ISSUES FOR PRACTITIONERS, OWNERS, AND DEVELOPERS IN BITE-SIZED PIECES – This presentation will explore current key issues affecting the condominium space. Topics include significant recent changes the Act, pre-suit notice and inspection procedures, along with active areas in the law relating to common areas/elements, the evolving definition of a condominium, warranties, and more.
Curt M. Covington, Rockwall

PRESIDING OFFICER: Ian P. Faria, Houston

8:15 **LEGISLATIVE UPDATE** – A review of the construction related bills that passed in the 85th Legislative Session and a preview of the key issues and goals for the 86th Legislative Session.
William "Ben" Westcott, Houston

8:45 **HOT TOPICS FROM IN-HOUSE COUNSEL IN 2018** – Three in-house counsel discuss the issues that most concern construction companies in 2018. The panel members represent experienced builders and owners and will discuss what they see as increasingly significant legal issues in the construction industry, including such topics as owner controlled insurance programs (OCIP), indemnity provisions, damages for delay, flow down obligations, and risk allocation for design defects. The panelists will also comment on what they expect from outside counsel regarding these issues.
Moderator: Pierre Grosdidier, Houston
Panelists: Kelly A. Carr, Dallas
Vijay A. D'Cruz, Houston
Jason T. Martin, Houston

9:30 **ECONOMIC LOSS RULE AND THE CLAIM FOR CONTRIBUTION** – The impact of the economic loss rule on Chapter 32 and 33 claims for contribution will be discussed, along with strategies for using the economic loss rule as a defense to contribution claims and for responding to such a defense.
.50 Ethics
John P. Cahill, Jr., Houston

10:00 **BREAK** – Sponsored by FTI Consulting, Inc.

10:30 **THE NIGHT IS DARK AND FULL OF TERRORS: THE HORRIFYING DANGERS OF TEXAS CONSTRUCTION LAW** – Forget the White Walkers. Missed or flawed certificates of merit, magic language to preserve claims or defenses, hidden DTPA violations, and notice deadlines – these are the real stuff of nightmares that await under Texas law. Learn more about these and other dangers and how to avoid the pitfalls all around us, because in construction cases: What you don't know *can* hurt you.
Amy M. Emerson, Austin

11:00 **IT'S LIKE DÉJÀ VU ALL OVER AGAIN: A LOOK AT THE 2017 AIA A201 GENERAL CONDITIONS** – This presentation will address the more notable changes and omissions in the new AIA A201–2017 General Conditions and discuss suggested modifications.
Matthew S.C. Moore, Houston

11:30 **WHERE DID MY PERFORMANCE BOND GO AND HOW DID I LOSE IT?** – A short study of performance bond defenses, with emphasis on how to handle some of the common scenarios and typical mistakes made by the obligee. Ever wonder how and when to obtain consents of surety or how to handle phased projects under a single bonded contract? What is material alteration and what does it mean in Texas? What should I do as the obligee when money is running out on the bonded contract? This presentation will give you some practical tips and helpful contract clauses to avoid the surety saying "no".
Thomas R. Barber, Houston

12:00 **LUNCHEON** – *Tickets available for \$26 each.*
Topic: MANAGING HIGH PROFILE LITIGATION – Issues and suggestions for dealing with clients, the press and the public when your case attracts media attention.
.75 Ethics
Lamont A. Jefferson, Austin
Hon. Wallace B. Jefferson, Austin

PRESIDING OFFICER: G. Stewart Whitehead, Austin

1:30 **SUCCESSFUL CONSTRUCTION OF THE DEATH STAR** – Creative leasehold construction financing, contractual subordination, and the risk shifted to lien claimants.
Bethany F. Thompson, San Antonio

2:00 **PRACTICAL EFFECT OF ENFORCING INDEMNITY** – While the concepts for drafting a valid indemnity clause are generally understood, the practical implications of enforcement once a loss occurs are less so. We will discuss the logistics of seeking indemnifications, parsing contract language, addressing the outcome of the underlying liability, and resolving ultimate responsibility under the indemnity clause.

Gregory Alan Harwell, Dallas

2:30 **BREAK**

2:45 **RAFFLE**

3:00 **ONE BREACH, TWO BREACH, OLD BREACH, NEW BREACH** – An analysis of competing breach claims in light of *Bartush v. Cimco* including: the effect of materiality, considerations regarding continued performance after breach, jury charges recommended by the Texas Supreme Court, and unique issues with attorney's fees.

Amy K. Wolfshohl, Houston

3:30 **A SPEEDY DEFENSE** – Practical strategies for contractors seeking immunity based on compliance with contract documents from property and personal injury claims. We will focus on strategies to optimize a contractor's opportunity to obtain summary judgment based on statutory immunity under Chapter 97, including contract drafting suggestions, record-keeping best practices, and effective presentation of evidence demonstrating compliance as matter of law.

Cathy Altman, Dallas

4:00 **ADJOURN**

PRESIDENT, THE CONSTRUCTION LAW FOUNDATION OF TEXAS

Richard P. Flake, Richard P. Flake, PLLC, Houston

PRESIDING OFFICERS

George E. Bowles, Locke Lord LLP, Dallas

David P. Boyce, Wright & Greenhill PC, Austin

Ian P. Faria, Bradley Arant Boult Cummings LLP, Houston

G. Steward Whitehead, Winstead PC, Austin

CONFERENCE FACULTY

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Carrington, Coleman, Cokinos | Young, Sloman & Blumenthal, Houston L.L.P., Dallas

Hon. Anne Ashby (Ret.) Curt M. Covington
Law Office of Anne Lamberth Ratcliffe
Ashby, PLLC, Dallas Covington, PLLC,
Rockwall

Paula Fisher Baldwin Vijay A. D'Cruz
Attorney at Law, Austin Enterprise Products
Operating, Houston

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Jessica Z. Barger Robin C. Gibbs
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Benjamin, Vana, Haynes and Boone, LLP,
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Locke Lord LLP, Dallas Slates Harwell, LLP,
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Erika L. Bright Jerry Hoover
Wick Phillips, Dallas Attorney/Mediator,
Houston

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LeClairRyan, Houston Jefferson Cano Allison
LLC, Houston

Clayton C. Cannon Barkley, PLLC, San
Cannon Law Firm Antonio

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Capshaw & Associates, Dallas Alexander Dubose
Dallas Jefferson & Townsend
LLP, Austin

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The Brandt Companies, Johns Marrs Ellis &
LLC, Carrollton Hodge LLP, Austin

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Sanderford & Carroll Porter Hedges LLP,
P.C., Temple Houston

Jason T. Martin

J E Dunn Construction
Company, Houston

Matthew S.C. Moore
Peckar & Abramson,
P.C., Houston

James R. Old, Jr.
Hicks Thomas, LLP,
Beaumont

James W. Rudnicki
Bush Rudnicki
Shelton, P.C., Austin

Paul H. Sanderford
Sanderford & Carroll
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Kristen L. Sherwin
Winstead PC, Dallas

Bethany F. Thompson
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Vincent Serafino
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Jenevein, P.C., Dallas

William B. Westcott
Andrews Myers, P.C.,
Houston

Patrick J. Wielinski
Cokinos | Young, Irving

Amy K. Wolfshohl
Porter Hedges LLP,
Houston

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

HOTEL INFORMATION

31st ANNUAL CONSTRUCTION LAW CONFERENCE ♦ March 1 & 2, 2018

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

A special block of rooms has been reserved at The La Cantera Resort & Spa at the special rate of \$220 for single/double. The hotel will release all unused rooms on the **CUTOFF DATE of FEBRUARY 2, 2018**. When contacting the hotel you must identify yourself as a participant with the "31st Annual Construction Law Conference" (Group Code: TIB2518A) in order to obtain the special rate in our room block. **Please call the hotel reservation line at (855) 499-2960 to make your reservation.** A deposit equal to your first night's room and tax will be required. We recommend that you make your reservations immediately if you plan to attend this course. Once the room block is exhausted rooms will only be provided on a space and rate-available basis.

REGISTRATION FORM

Mail to: Texas Institute of Continuing Legal Education
31st 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
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 9).....\$500.00
- Pre-Registration for Construction Law Section Members.....\$450.00
(due by 5 p.m. February 9)
- Registration after 5 p.m. February 9 & before 5 p.m. February 23.....\$ +50.00
- Registration after 5 p.m. February 23 and at the door.....\$+100.00
- Construction Law Section Dues (eligible for the member registration fee)..... \$ 30.00

___ Thursday Luncheon Ticket *Discounted* at \$16 each \$ _____
___ Friday Luncheon Ticket at \$26 each..... \$ _____
___ # of "Helping A Hero" Raffle Tickets* (\$10 each or 3 for \$25) \$ _____

- I will play in the Golf Tournament on Wednesday, February 28, 2018
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 23, 2018. Cancellation policy on back cover. (Call for Government and Student Discount Information)

Name _____
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Make Check Payable to: Texas Institute of Continuing Legal Education
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Security Code: (3 digit code on MC/Visa, 4 digit code on AmEx): _____
Billing Address (including zip): _____
Authorized Signature _____



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March 1 & 2, 2018
**The La Cantera Resort & Spa
San Antonio, Texas**

Cover Art – “Fiesta Time” is an original by Julene Franki, former Director, TexasBarCLE and Executive Director, ALI-ABA. Julene has graciously donated an art piece for the Helping a Hero raffle. You can find more of her work at www.julene.io.

***Helping a Hero** — We are proud to partner with *Helping a Hero* to offer raffle tickets for your chance to win great prizes during the conference. All raffle proceeds benefit Helping a Hero and their mission to empower our severely wounded veterans returning from service by providing specially adapted homes to reintegrate them into their community.

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 a Visa, MasterCard or American Express number, expiration date, security code and billing address.

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.

2018 PLANNING COMMITTEE
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Matthew C. Ryan, Austin
William W. Sommers, San Antonio

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 Construction Law, 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 approximately 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 submitted for 13.50 hours of General credit (all license types) and 3.0 hours ethics. This course is eligible for MCE credit through the Texas Real Estate Commission.

Annual Conference Sponsors also include:

- * **Flash Drives** – Sponsored by Spire Consulting Group, LLC
- * **Internet** – Sponsored by Exponent
- * **Name Badge Lanyards** – Sponsored by HSSK
- * **Notepads** – Sponsored by Bert L. Howe & Associates, Inc.
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