

PROGRAMS

PUBLICATIONS

PEOPLE



ABA FORUM ON THE CONSTRUCTION INDUSTRY AND
THE CONSTRUCTION LITIGATION COMMITTEE
OF THE ABA SECTION OF LITIGATION

COVERAGES, DISPUTES AND TACTICS FOR SURVIVAL:

CRITICAL INSURANCE AND LITIGATION ISSUES AND INSIGHTS

JANUARY 15-16, 2009

Hyatt Regency Coconut Point Hotel and Spa
Bonita Springs, FL

Serving the Construction Industry through Education, Leadership and Fellowship of Construction Lawyers

Dear Colleagues:

The annual Mid-Winter meeting of the Forum is moving to a warmer climate in January 2009 with a hot topic that should be of interest to all counsel working in the construction industry - **“Coverages, Disputes and Tactics for Survival: Critical Insurance and Litigation Issues and Insight.”** Insurance availability and coverage responsibility are critical issues in the construction industry today. Counsel must be knowledgeable of the intricacies of these issues not only for the initial drafting of contracts but to also be effective in advising and representing clients in disputes that may arise on a project. This program provides a solid background for the construction lawyer looking to further his or her skills relating to insurance issues. Being able to recognize and understand these issues and to best position you and your client in handling insurance disputes, claims and litigation is the focus of this year’s mid-year meeting.

Not only has the Forum moved the meeting to the warmer, sunnier climes of Florida, but we have a new co-sponsor for the Mid-Winter program, the Construction Litigation Committee of the ABA Section of Litigation. The combination of our two groups will provide new opportunities to share ideas and to form valuable new contacts.

This two-day program will include five plenary sessions and a series of focused workshops , all with the goal of providing the most up-to-date and comprehensive information you need to advise and represent clients in insurance-related issues arising out of construction projects. You will also gain valuable insight of issues to be considered when drafting and negotiating construction contracts.

The program’s opening session, aptly titled “Insurance 101,” delves into the essential terms, concepts and principles of insurance coverage that construction counsel and litigators must master to identify insurable events and to

appropriately advise clients. Other plenary sessions include: handling of construction defect claims, and making sure that the appropriate insurance carriers come to the table, stay at the table and actively participate in ADR. The ethical dilemmas facing insurance defense counsel – who often must answer to both the insured client and to the insurance carrier paying the legal bill – will be the focus of an enlightening session – to close out the program.

In addition to the plenary sessions, workshops will focus on complex insurance and litigation issues , including professional liability issues, insurance impacts on “green construction,” valuing property damage claims, the inter-play of insurance and integrated practice, and risk management for international construction projects.

We are pleased to have a group of speakers drawn from the ranks of both the Forum and the Construction Litigation Committee who are well known in their areas of expertise and bring a combination of comprehensive insurance coverage knowledge and construction litigation experience to each session.

As always, the Forum meetings provide the collegial environment for attendees to network with old friends and make new ones. Going to a warm climate in January will be enticing enough for some, but the opportunity to enjoy the Florida Gulf, an afternoon of golf, or some back-country fishing, all while gaining valuable information for your construction practice, makes this a Program that shouldn’t be missed.

The ABA Forum on the Construction Industry and the Construction Litigation Committee of the ABA Section of Litigation are excited to host this very timely and comprehensive program and look forward to seeing you in mid-January under the warm Florida sun.

PROGRAM CHAIRS:

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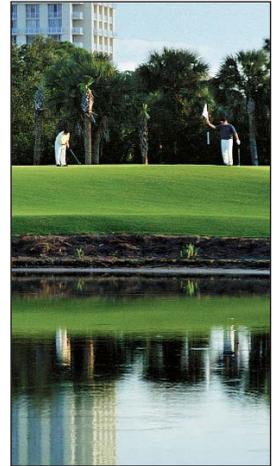
Charlotte Wiessner, Esq.
Sherman & Howard LLC, Denver, CO

Event Highlights:

GOLF TOURNAMENT

Join us at 1:00 pm on Friday, January 16, for a captains choice tournament at Raptor Bay, a Raymond Floyd design. The course is the first resort course in the world to receive Audubon International's Gold Signature Sanctuary Certification. With no residential sites on the property, the tournament quality course features wide fairways with one height of cut throughout and five sets of tees to give players of every skill level a memorable outing.

Cost: \$175 per person.



FISHING TOURNAMENT

Join us for a backcountry fishing tournament off the beautiful mangrove islands of Southwest Florida. Professional captains will take you to their favorite fishing holes to reel in the catch of the day such as Redfish, Snook, Trout, and Mangrove Snapper. The four-hour tournament will begin at 1:30 pm on Friday January 16th. Awards will be presented to the angler who lands the largest fish in each species and also to the angler who catches the largest overall fish. License, bait, tackle, lunch and refreshments included.

Cost: \$95 per angler.

HYATT COCONUT POINT

Share delightful days and exciting evenings at the ideally located Hyatt Regency Coconut Point Resort & Spa. This family-friendly Bonita Springs hotel offers something for everyone. Lounge by inviting pools or enjoy a cool plunge in the waterfall. Championship golf, tennis, biking, hiking or a soothing spa treatment may all be found at this exquisite Bonita Springs resort. Surrounded by the natural beauty of Estero Bay the stunning hotel is just minutes from local beaches, dolphin excursions or an evening of entertainment in Ft. Myers or Naples. Stylish, contemporary accommodations, delectable dining and a welcoming staff ensure you'll enjoy the best of Southwest Florida.

GETTING THERE

The hotel is easily accessible from a number of Florida Airports. Southwest Florida International Airport in Ft. Meyers is just 17 miles from the property. The property is also a short commute from Tampa, Orlando or Ft. Lauderdale. More information can be found on the hotel's website at www.coconutpoint.hyatt.com.

Program Schedule:

Wednesday, January 14

3:00 - 5:00 PM

Advanced Registration/Information

Thursday, January 15

8:00 AM - 5:00 PM

Registration/Exhibition Open

8:00 - 9:00 AM

Continental Breakfast

(Available to paid registrants)

9:00 - 9:15 AM

Welcome From the Chair

Opening Remarks and Announcements

9:15 - 10:30 AM

PLENARY 1

Insurance 101: What Every Construction Lawyer Needs to (and Should) Know About the Insurance Industry

As advisors to your clients, whether in the context of negotiating contracts or engaging in litigation or ADR, lawyers need to know and understand some basic concepts and factors that influence the insurance industry. The panel will discuss the role of the broker, underwriters, and reinsurers, and factors that influence insurance rates such as the economy and natural and man-made disasters like Katrina and 9/11.

Moderator

Eileen R. Ridley, Esq.

Foley & Lardner LLP, San Francisco, CA

Speakers:

Kate Enos, Esq., Assoc. AIA

Victor O. Schinnerer & Company, Inc., Chevy Chase, MD

Tim Clancy, Esq.

Flood and Peterson Insurance, Greeley, CO

10:30 - 10:45 AM

BREAK

10:45 - 12:00 PM

PLENARY 2

The Construction Defect Case: Litigating the Defect or Litigating to Coverage

There was a time when most construction litigation focused on delays, disruption, escalation, and acceleration issues, extras and scope of work disputes, and standard collection practices. Concepts such as "float," "critical path," "extended home office overhead," and the like were being dropped in courtrooms like confetti. Settlements were fueled by the fact that each side was a business person looking at the bottom line, and saw litigation as a very unproductive use of time and resources. The disputes environment has been evolving to the point that much of the current litigation surrounds construction defects, and insurance carriers are playing an increased role. Unlike the actual parties, litigation time and costs are simply part the normal business routine for carriers. This program will help litigators become aware of this new dynamic.

Speakers:

Clifford J. Shapiro, Esq.

Barnes & Thornburg, LLP, Chicago, IL

Patrick J. Wielinski, Esq.

Cokinos, Bostien and Young, Arlington, TX

Paul A Sandars, III, Esq.

Lum, Drasco & Positan, LLC, Roseland, NJ

12:00 - 1:30 PM

NETWORKING LUNCH

1:30 - 2:30 PM

WORKSHOP A

Is the Line Blurring Between General and Professional Liability?

As the needs and demands of clients increase and technology allows both contractors and design professionals to provide more services for their clients, the confusion between what is covered under a general liability policy and what is covered under the professional liability policy will increase. The question of what a professional service is, and who provides it, will be central in determining if a claim is covered under the general or professional liability policy. From both third party-claimant and first party-insured perspectives, the session will analyze litigation strategies that consider and account for these fine and evolving lines.

Speakers:

Sean T. Devenney, Esq.

Drewry Simmons Vornehm, LLP, Indianapolis, IN

Gregg D. Bundschuh, J.D.

Ames and Gough, Atlanta, GA

1:30 - 2:30 PM

WORKSHOP B

Valuing Loss Under Property Coverage

Establishing the amount of loss under a property policy is an art. Beyond the replacement versus cash value distinction many other issues lurk. What is extra expense coverage? What does the soft-cost endorsement cover? We will also explore what every lawyer needs to know about the appraisal process to identify the proper target, and, when multiple targets are available, to keep them in play and avoid becoming a replacement target under a following malpractice action.

Speakers:

Anthony J. D'Amico, S.P.P.A

Goodman-Gable-Gould/Adjusters International, Richmond, VA

Hayes M. Walker, III, CPA

Rollins Accounting & Inventory Services, Inc., Rockville, MD

2:30 - 2:45 PM

BREAK

2:45 - 3:45 PM

WORKSHOP C

Is the Insurance Industry Meeting the Needs of Integrated Practice?

As the design and construction industry moves toward building information modeling (BIM) and other forms of integrated practice, is the insurance industry meeting the evolving needs of the construction industry? Do typical general and professional liability policies provide adequate coverage? Are there other types of insurance policies that may be required to address all the various risk? What trends and new insurance products will likely come into play to meet the needs of integrated practice?

Speakers:

Douglas C. Green, J.D.

Marsh, Inc., Minneapolis, MN

J. Kent Holland, Esq.

ConstructionRisk.com, LLC, Vienna, VA

2:45 – 3:45 PM
WORKSHOP D

Risk Management for International Construction Projects: What you Need to Know Before Contracting Across National Borders

As construction becomes increasingly global in nature, companies need to be aware of the risks involved and the mechanisms available to address those risks, including insurance, letters of credit, bonds, contingencies, etc. Learn what to look for and the safeguards to put in place from people who deal with these issues every day.

Speakers:

Matthew R. Alter, Esq.
Borden Ladner Gervais LLP, Toronto, Ontario

John M. Wilson, Esq.
Latham & Watkins LLP, Los Angeles, CA

3:45 – 4:00 PM
BREAK

4:00 – 5:00 PM
WORKSHOP E

When the Unexpected Happens – Am I Liable and, more importantly, Am I Covered?

Crane collapses and job site injuries are examples of unexpected events that can occur on a construction site. It is often difficult to identify the responsible party, and even more so, what insurance coverage may be implicated. This session will provide practical tips for identifying potentially responsible parties, where to look for insurance coverage (CGL, Professional Liability, Builders Risk), and for identifying all appropriate causes of action and additional insured issues. The panel will also discuss broker/agent liability for failure to obtain proper coverage and/or issuing inaccurate insurance certificates.

Speakers:

Lee H. Shidlofsky, Esq.
Visser Shidlofsky, Austin, TX

David T. Dekker, Esq.
Thelen LLP, Washington, DC

4:00 – 5:00 PM
WORKSHOP F

Sustainable Design and Construction: When Green Turns Red

Sustainable design and construction is fast becoming one of the more important challenges for the design and construction industry. In addition to environmental and energy related drivers behind these initiatives, there are now specific rewards, incentives and tenants on the line if the project's sustainable goals are not met. What do industry programs like LEED require of the design and construction community? What does it mean to insure or to bond a green project? Innovations and new concepts fuel the construction industry and often lead to vastly superior projects, but at the same time provide equally new and innovative areas of dispute to be faced by litigators, arbitrators and mediators.

Speakers:

Matthew Coglianese, Esq.
Peckar & Abramson, Miami, FL

Ujjval K. Vyas, Ph.D., J.D.
Alberti Group, Chicago, IL

6:00 – 8:00 PM
Welcome Reception

Hyatt Regency Coconut Point Resort & Spa

Friday, January 16

7:45 AM – 12:00 Noon
Registration/Exhibition Open

7:45- 8:45 AM
Continental Breakfast

(Available to paid registrants)

8:45 – 8:50 AM
ANNOUNCEMENTS

8:50 – 9:50 AM
PLENARY 3:

Maximizing Meaningful Participation of Insurance Carriers in Construction Defect Litigation

What can construction lawyers do to get design and trade liability carriers to become meaningfully involved in mediated settlement programs? A panel of seasoned construction litigation lawyers and mediators will examine the processes for getting insurance carriers to attend mediations with both the attitude and authority necessary to give settlements a chance to happen. Focus will fall on common issues involving coverage, subrogation, co-insurance provisions, and claims adjustment policies that often serve to make mediations less than productive. The panel will suggest ways and means that can be implemented or proposed by counsel to minimize their effect.

Speakers:

Lawrence M. Watson, Jr., Esq.
Upchurch, Watson and White, Maitland, FL

John G. Bickerman, Esq.
Bickerman Dispute Resolution, Washington, DC

E. Richard Kennedy, Esq.
Kennedy, Wronko and Kennedy, Montville, NJ

9:50 – 10:50 AM
PLENARY 4

OCIPs, CCIPs and Project Policies: Are they all they are cracked up to be?

On large construction projects, Owner Controlled Insurance Programs (OCIPs) and Contractor Controlled Insurance Programs (CCIPs) are becoming increasingly common as a means of decreasing risk and cost while providing a potential profit center to the controlling entity. They can also present unique legal issues and disputes if not carefully drafted and administered. This program will also address project policies and managing self-insurance/deductibles. Once called upon, OCIPs and CCIPs present added and unique issues to the litigators who find themselves facing an unfamiliar opponent operating and protected under specialized policy provisions and answering to a separate master.

Speakers:

Amy H. Iannone, Esq.
Barton Malow Company, Southfield, MI

Kimberly S. Bunting, Esq.
Duane Morris LLP, Atlanta, GA

Sandy M. Kaplan, Esq.
Gordon & Rees LLP, San Francisco, CA

10:50 – 11:00 AM
BREAK

11:00 – 12:00 PM
PLENARY 5

Who's Your Master? the Practical and Ethical Tension between Answering to the Insurer who pays the bills or Answering to the Client

This program will focus on ethical issues and dilemmas facing defense counsel from both a practical litigation perspective and under the overriding ethical considerations and limitations. This pertains to counsel assigned by the carrier or selected by the client, including captive defense counsel, in defending against the typical panoply of causes of action, some of which are covered, some of which not, and some whose coverage is in question. The panel will also address the "mixed bag" of insured and non-insured claims, and counsel's obligation to the client.

Speakers:

William J. Chriss, M.A., J.D.
Texas Center for Legal Ethics and Professionalism, Austin, TX

Anne L. Blume, Esq.
Meckler Bulger & Tilsen, LLP, Chicago, IL

12:00 PM
ADJOURN

Conference Information

ADVANCE REGISTRATION

Please complete and return the attached registration form with your payment by December 3, 2008. If you wish to have your name appear on the pre-registration list distributed at the program, we must receive your registration no later than this date.

We encourage you to register online at www.abanet.org/forums/construction. Conference registrations will only be accepted when accompanied by a check, money order, Visa, American Express, or MasterCard information. Credit card registrations may be FAXED to the ABA Forum on the Construction Industry, at (312) 988-5677. Registrations cannot be held without payment.

ON SITE REGISTRATION

On site registration is available for those persons who missed the registration deadline. If you plan to register at the door, you must call (312) 988-5678 at least 72 hours before the conference to confirm that space is still available. Failure to call in advance may result in not being admitted to a sold out program. On site registration will only be accepted when accompanied by a check, money order, American Express, Visa or MasterCard information. Registrations will not be accepted without payment.

REGISTRATION CONFIRMATION

If you do not receive a written confirmation by December 3, 2008, please call Katie Lawrence at (312) 988-5678 to verify that your registration form and check were received. Failure to call in advance of the program may result in not being admitted.

TUITION

Tuition includes admission to the program, coffee breaks, continental breakfasts, lunch, one ticket to the Reception, and one set of program course materials. Lunch is limited to registrants, faculty and members of the press.

CANCELLATION POLICY

No refunds will be granted for cancellations received after December 3, 2008. To receive a refund (less a \$50 administrative fee), cancellations must be made **IN WRITING** and **RECEIVED** on or before December 3, 2008. Registrants who are unable to attend may send a substitute or receive course materials in lieu of a refund. The ABA reserves the right to cancel any programs, and assumes no responsibility for personal expenses.

HOTEL

The conference will be held at the Hyatt Regency Coconut Point Resort & Spa, 5001 Coconut Road, Bonita Springs, FL 34134. Reservations can be made by calling (800) 233-1234. A room block has been reserved for our attendees at a rate of \$305 single/double room per night. After December 23, 2008 at 5 CDT or when the room block is sold out, guest rooms at the special ABA rate are not guaranteed and may not be available. Please refer to the ABA Forum on the Construction Industry 2009 Midwinter Meeting when making your reservation. Individuals with guaranteed reservations must cancel their reservations 72 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.

AIR TRANSPORTATION

Discounted airfares are available for travel to ABA Master Calendar meetings. ABA and Orbitz negotiated airfare discounts and web only fares are available to members at ABA Online Travel. Visit www.abanet.org and select ABA Online Travel under ABA Calendar. Airfare discounts are available to all meeting attendees by calling the ABA's travel agency, Orbitz for Business, toll-free at 877-222-4185.

CLE CREDIT

Accreditation has been requested for the conference from every state with mandatory continuing legal education (MCLE) requirements for its lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE". Check your state agency for confirmation of this program's approval. Attorneys seeking to obtain MCLE credit in Louisiana and Pennsylvania are required to pay state accreditation fees directly to that state. Certificates of attendance will be available at the conclusion of this conference. For questions pertaining to the number of credit hours granted by each state, call (312) 988-5678 two or three weeks after the conference.

MEMBERSHIP

As an added bonus to new members, the membership tuition rate will be available to registrants who join the Forum on or before the first day of the program. For your convenience, a Forum membership form is included in the brochure. Membership dues are not deductible as charitable contributions for federal income tax purposes. However, such dues may be deductible as a business expense.

TAX DEDUCTION FOR EDUCATIONAL EXPENSES

In the United States, an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals, and lodging expenses. (see Treas. Reg. 1.162-5) (*Coughlin vs. Commissioner* 203 F 2d 307).

COURSE MATERIALS

If you are not planning to attend the program and wish to order the course materials, check the appropriate box on the registration form and send it with the appropriate fees. Allow approximately 3-4 weeks after the program for delivery.

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required for an individual with a disability to attend this program, please submit your request in writing to Shannon Harrity, Forum on the Construction Industry, American Bar Association, 321 N Clark, MS 18.2, Chicago, IL 60654, or Fax to (312) 988-5677, no later than December 17, 2008.

FORUM ON THE CONSTRUCTION INDUSTRY WEBSITE

Website:www.abanet.org/forums/construction/home.html

CELL PHONE POLICY

As a courtesy to speakers and attendees, we request that all cell phones and pagers be turned off in the meeting rooms.

