



American Bar Association
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Chicago, IL 60610



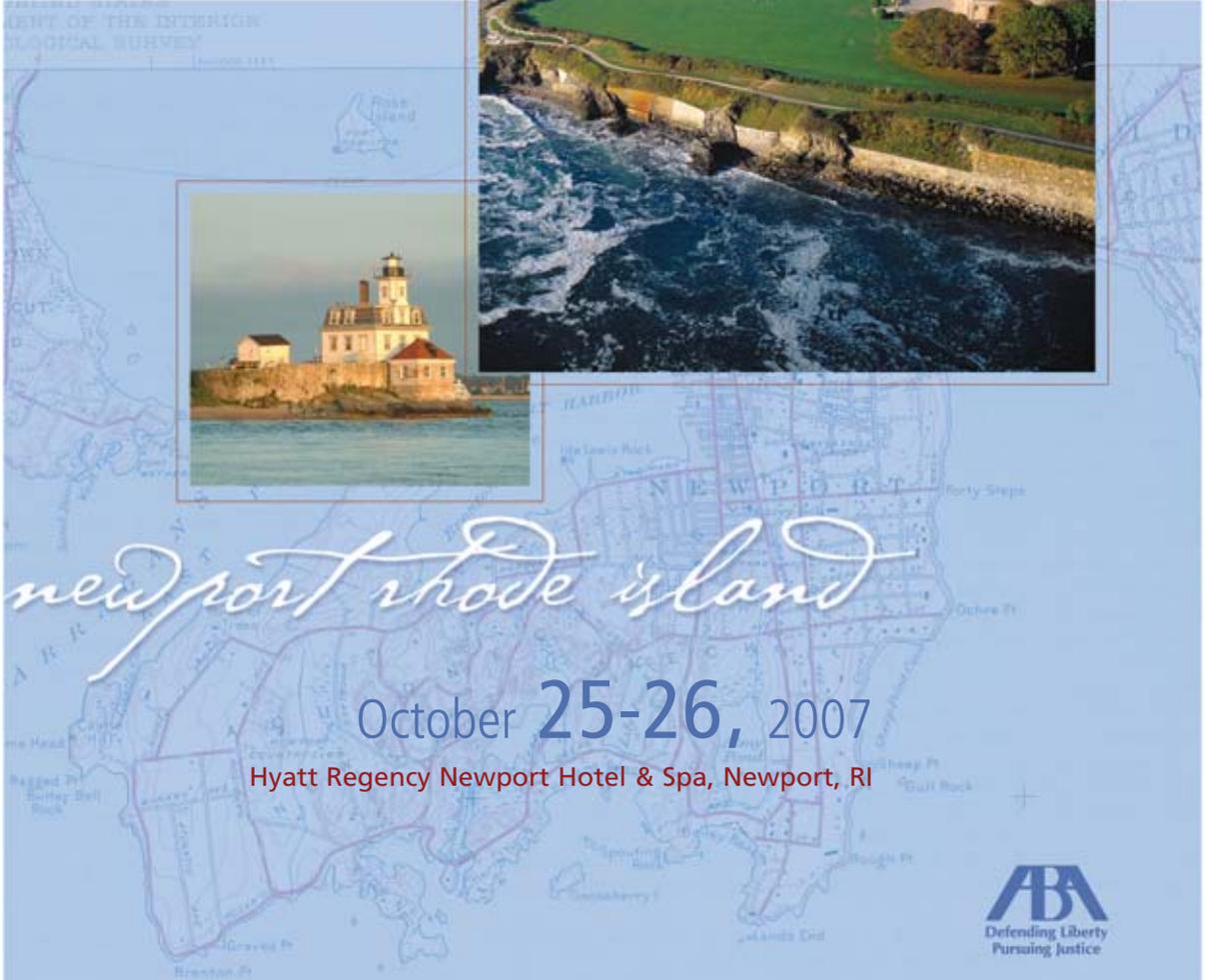
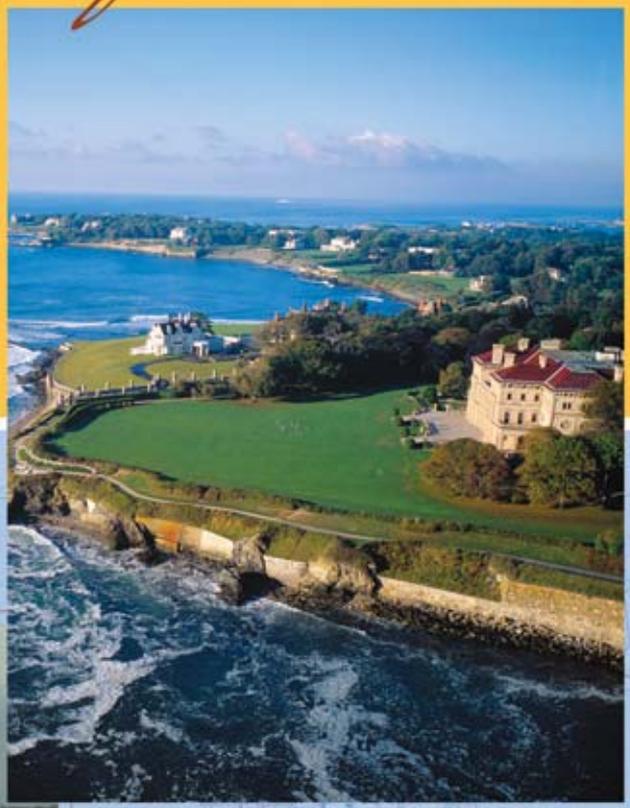
newport
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ABA Forum on the Construction Industry
2007 **Fall Meeting**

Another Perfect Storm



October **25-26**, 2007

Hyatt Regency Newport Hotel & Spa, Newport, RI



Dear Colleagues

At the Forum's 2007 Fall Meeting, we will set sail in beautiful Rhode Island and navigate the stormy waters encountered in managing the risks of a construction project. Regardless of which member of the crew you represent--the owner, design professional, the contractors or subcontractors--this Program will provide you advanced guidance to maneuver the Project Ship through the storm from the time the course for the Project is initially charted until you dock at Project completion.

On the opening day of our Program, we will begin our journey with exploring how to navigate your way through the electronically managed project. Our sophisticated panel of presenters will discuss the legal challenges presented with the use of electronic design tools and workrooms, dedicated project websites, and building information modeling (BIM) during the construction process. Day 1 of our charted course will also include lively and interactive panel discussions which will address managing the risk and liability for construction administration by design professionals and agency construction managers, the practical use and implications of incentive and disincentive clauses during construction, addressing the cumulative effects of requests for information, change order requests and change directives, and how you, as counsel, can successfully assist the project participants while dealing with common and, not so common, events that threaten the course of the project—both in terms of the schedule and the costs.

On Day 2 of our journey, our morning begins with a sail through the treacherous waters of claims brought under the Civil and Criminal False Claims Acts. We will also explore the disruptive effect of contract defaults during the course of construction, and surety's role in completing a troubled project. And our travels together conclude as we direct our ship into international waters, where our experienced presenters will address the ethical considerations in multi-jurisdictional international practice.

This Program is well suited for the experienced counselor who may have sailed the troubled waters already as there are always new challenges in helping clients adjust for those unique risks of the construction process. Our time together will help our clients chart an effective course and navigate the stormy waters of construction. We look forward to setting sail with you in beautiful Newport, Rhode Island.

Arthur D. Brannan

Program Co-Chair

DLA Piper US LLP, Atlanta, GA

Gregory L. Cashion

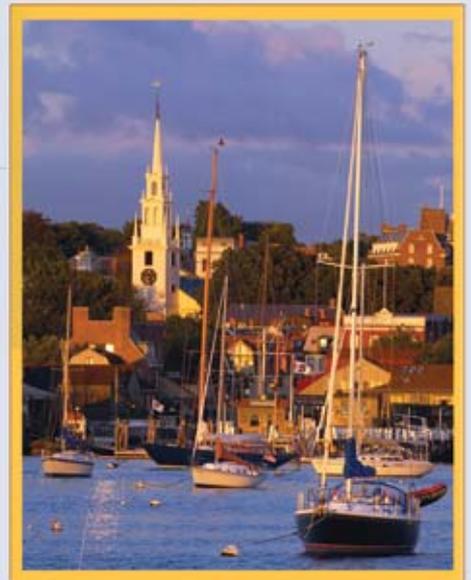
Program Co-Chair

Smith & Cashion PLC, Nashville, TN

A. Elizabeth Patrick

Governing Committee Liaison

Patrick Law Group, LLC, Atlanta, GA



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Schottenstein, Zox & Dunn
Columbus, OH

Chair-Elect

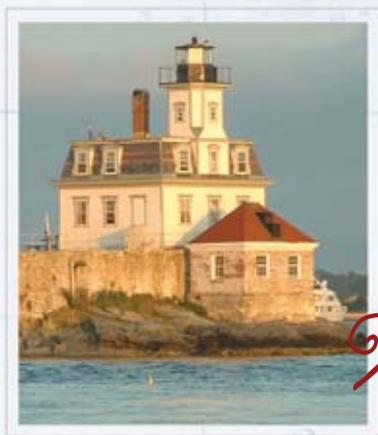
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Program Schedule

Wednesday, October 24

3:00 – 5:00 PM

ADVANCED REGISTRATION/INFORMATION

Thursday, October 25

7:30 AM – 5:00 PM

REGISTRATION/EXHIBITION OPENS

7:30 – 8:30 AM

CONTINENTAL BREAKFAST

(Available to Paid Registrants)

8:30 – 8:40 AM

WELCOME FROM THE CHAIR

Michael D. Tarullo

Schottenstein Zox & Dunn, Columbus, OH

8:40 – 8:45 AM

OPENING REMARKS AND ANNOUNCEMENTS

Gregory L. Cashion

Smith Cashion & Orr PLC, Nashville, TN

Arthur D. Brannan

DLA Piper US LLP, Atlanta, GA

8:45 – 10:00 AM

PLENARY 1:

SUCCESSFULLY NAVIGATING YOUR WAY THROUGH THE ELECTRONICALLY-MANAGED PROJECT:

Legal Challenges Presented By The Increased Use of Electronic Design Tools, Building Modeling Systems and Electronic Workrooms

Howard Ashcraft

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP
San Francisco, CA

Bruce R. Gerhardt

HDR, Inc., Omaha, NE

Timothy M. O'Brien

Faegre & Benson LLP, Minneapolis, MN

Our Panel will review the use of collaborative electronic design tools and electronic workrooms (including CADD, project-dedicated websites, and building information modeling (BIM) systems) during the construction process, various legal concerns presented by their use, and methods or strategies for dealing with those concerns. The Panel also will address how "electronically stored information" generated through these collaborative processes is affected by the recent amendments to the Federal Rules of Civil Procedure.

10:00 – 11:00 AM

PLENARY 2:

WHO'S STEERING THE SHIP?: Construction Administration by Design Professionals and Agency Construction Managers

Frank Riggs – Moderator

Troutman Sanders, LLP, Atlanta, GA

Stanley J. Dobrowski

Calfee, Halter & Griswold, LLP, Columbus, OH

Karl F. Oles

Stoel Rives, LLP, Seattle, WA

One key decision in managing the risk of a construction project is choosing someone to represent the owner's interests during construction. Our speakers will discuss the options of using a design professional and/or an "agency" construction manager to provide construction administration, and the liability issues associated with construction administration. Attendees will learn the similarities and differences between these options and receive a checklist of issues to consider on your next project. You will also learn how design professionals and agency CM's can contribute to – and help resolve – problems when a "perfect storm" strikes on a project.

11:00 – 11:15 AM

BREAK

11:15 AM – 12:15 PM

PLENARY 3:

HIGH AND LOW TIDES: Practical Use and Impact of Incentive and Disincentive Clauses

William J. Ferguson – Moderator

McCarter & English, LLP, Boston, MA

John W. O'Neil, Jr.

Western Group, Inc., St. Louis, MO

Nancy Taylor

Bechtel Corporation, Frederick, MD

The foundation for incentive and disincentive clauses is to establish defined economic consequences to a range of performance outcomes. Our speakers will address various incentive/disincentive clauses, their objectives and enforcement and how they encourage and discourage behavior during the course of the project.

12:15 – 1:30 PM

LUNCH

WAR GAMING AND HOMELAND

SECURITY: Using Gaming to Discover What You Didn't Know You Didn't Know

Professor Robert C. "Barney" Rubel

*Dean of the Center for Naval Warfare Studies
Naval War College, Newport, RI*

1:45 – 2:45 PM

PLENARY 4:

HURRICANE WARNINGS: Dealing with the Cumulative Effects of RFIs, Change Order Requests and Change Directives

Buckner Hinkle, Jr.

Stites & Harbison, Lexington, KY

Michael I. Less

Less, Getz & Lipman, Memphis, TN

How effectively the project management team addresses RFI's and change order requests can be the difference between a successful project and a project with substantial unresolved claims and cost overruns. Our speakers will discuss the potentially devastating effect of numerous RFI's and change orders and the use of contract provisions and effective management to control the cumulative impact to the project.

2:45 – 3:45 PM

PLENARY 5:

SQUALLS, STORMS AND GETTING BACK

ON COURSE: Counsel's Role When Dealing With Mid-Course Adjustments In Project Planning And Scheduling And Resultant Claims

Michael F. D'Onofrio

Capital Project Management, Inc., Blue Bell, PA

John S. Vento

Trenam Kemker, Tampa, FL

The Speakers will discuss the risks and liabilities associated with failing to use the project schedule as an effective management tool and current trends and techniques related to the use of project schedules when proving or addressing claims in the aftermath of mid-course adjustments. The Speakers also will address various common occurrences, such as force majeure events, acceleration of the work, non-compliance with contractual obligations relating to the project schedule, an owner's refusal to accept a contractor's schedule, use of multiple project schedules, etc., and how counsel can assist project participants when dealing with these situations.

3:45 – 4:00 PM

BREAK



4:00 – 5:00 PM**PLENARY 6:****TAKING ON TOO MUCH WATER:** Making Sure Control and Management of Costs Provide the Survival Kit of Sound Evidence When Needed**John E. Bulman***Little Medeiros Kinder Bulman & Whitney, Providence, RI***Pat McGeehin***Rubino & McGeehin, Bethesda, MD*

The ability to control and manage project costs when the unexpected occurs often means the difference between a successful project and years of protracted litigation. Integration of cost control and evidentiary demands often can challenge the course of conduct on a project. This session will focus on the selection and implementation of cost control systems and other tools that allow project participants to monitor and measure project costs and productivity impacts during the course of construction and how counsel can assist in directing and overseeing this process. Our speakers will also provide an overview of generally accepted practices and current industry trends concerning the documentation and measurement of project costs and productivity losses.

6:00 – 8:00 PM**WELCOME RECEPTION**

Newport Yachting Center

Transportation will be provided

Friday, October 26**7:30 AM – 12:00 NOON****REGISTRATION/EXHIBITION OPENS****7:30 – 8:30 AM****CONTINENTAL BREAKFAST**

(Available to Paid Registrants)

8:10 – 8:15 AM**OPENING REMARKS AND ANNOUNCEMENTS****8:15 – 9:15 AM****PLENARY 7:****TREACHEROUS WATERS:** Handling Claims Brought Pursuant To The Civil And Criminal False Claims Acts And "Whistleblowers" Who Initiate These Claims**Kristine L. Cato***McAngus Goudelock & Courie, LLC, Columbia, SC***Krista Pages***Dykema Gossett PLLC, Washington, DC*

Our Speakers will discuss the risks associated with making false claims and certifications, how best to deal with the Government's use of the Civil and Criminal False Claims Acts, the False Statements Act and the Forfeiture Statute, and how to protect and insulate your client from these claims in the future. Further, the Speakers will address certain employment law issues that may arise in connection with these types of claims, including those related to the client's treatment of "whistleblowers."

9:15 – 10:30 AM**PLENARY 8:****SHIPWRECKED:** Dealing With Construction Contract Defaults in the Real World**George J. Bachrach***Whiteford Taylor & Preston LP, Baltimore, MD***Deborah S. Butera***Adorno & Yoss, LLC, Atlanta, GA*

When construction contract defaults occur, they affect all of the parties to the construction process – owners and their agents, general contractors and subcontractors and their sureties, suppliers, and many others. How the parties deal with the default will determine whether the project can be completed successfully, and whether litigation, or at least major and expensive litigation, can be avoided. Our speakers will discuss the parties' various options before termination and after termination for managing performance-based defaults and how counsel can help the parties navigate their way through this process. Our speakers will also specifically address the surety's role in a troubled construction project, including its relationships with the other parties and its rights and obligations under the bonds.

10:30 – 10:45 AM**BREAK****10:45 – 11:45 AM****PLENARY 9:****A DARK AND STORMY NIGHT:** The Lawyer's Ethical Considerations When Involved In a Multi-Jurisdictional, International Practice**Michael Black QC***Two Temple Gardens, London, United Kingdom***Troy L. Harris***King & Spalding, LLP, Atlanta, GA*

Our Speakers will address the ethical concerns that counsel must be cognizant of when engaged in a multi-jurisdictional, international practice, whether negotiating contract documents, advising clients during the course of the project, communicating with adverse parties and their counsel, or appearing on behalf of a client in an international arbitration proceeding.

Conference Information

ADVANCE REGISTRATION

Please complete and return the attached registration form with your payment by **OCTOBER 4, 2007**. 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.

You are encouraged to register online at www.abanet.org/forums/construction. Conference registrations will only be accepted when accompanied by a check, 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 **OCTOBER 4, 2007**, please call (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 Annual Reception at Newport Yachting Center, 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 **OCTOBER 4, 2007**. To receive a refund (less a \$50 administrative fee), cancellations must be made IN WRITING and RECEIVED on or before **OCTOBER 4, 2007**. 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 Newport Hotel & Spa, One Goat Island, Newport, RI 02840. Reservations can be made by calling the hotel directly at (866) 317-8935. To ensure availability please make your reservation by **SEPTEMBER 18, 2007**. The Hotel Reservation Office will assign rooms on a space available basis. Conference Rates: \$209 s/d. We also have a small block of rooms at the Hotel Viking for the same room rate of \$209 s/d. You may call the Hotel Viking directly at (800) 556-7126.

AIR TRANSPORTATION

Discounted airfares are available for travel to ABA Master Calendar meetings. ABA and Travelocity 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, Travelocity Business, toll-free at 866-321-8403.

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 Alanna Sullivan, Forum on the Construction Industry, American Bar Association, 321 N Clark, MS 18.2, Chicago, IL 60610, or Fax to (312) 988-5677, no later than **OCTOBER 4, 2007**.

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.

Program Registration Form

Housing Deadline: September 18, 2007
Registration Deadline: October 4, 2007

Please print or type

1. REGISTRANT INFORMATION:

Last Name First Name M.I.

(Name as you wish it to appear on attendee list & name badge) ABA Member ID#

Firm/Company/Agency

Address

City State Zip

(Area Code) Business Phone Number (Area Code) Business Fax Number

E-mail Address

Spouse or Guest (Print as you wish name to appear on badge)

2. REGISTRATION FEES:

	ON OR BEFORE	AFTER
	10/4/07	10/4/07
<input type="checkbox"/> General Attendees	\$640	\$690
<input type="checkbox"/> Forum Members	\$540	\$590
<input type="checkbox"/> Government/Academic/YLD	\$380	\$430
<input type="checkbox"/> Law Students	\$270	\$320
<input type="checkbox"/> Additional Reception Ticket	\$50	\$60
Subtotal	\$_____	\$_____

- I am a New Member
- I would like a liaison to contact me
- If you are an attorney licensed in the state of New York, please check here

3. MEMBERSHIP APPLICATIONS:

- Please enroll me as a member of the Forum on the Construction Industry. Membership fee (\$50 Regular/\$5 Law Student). I understand I must be a member of the ABA and at least one Section. I belong to the following Section(s):

4. MATERIALS ONLY:

- I will not be attending the seminars and wish to order Program materials for \$150

5. TOTAL PAYMENT:

Total (Add subtotals 2, 3, or 4): \$_____

6. PAYMENT INFORMATION:

- Check (made payable to ABA)
- MasterCard American Express VISA
- Season Pass Voucher Money Order

Credit Card Number Expiration Date

Signature

7. THREE WAYS TO REGISTER:

ONLINE:

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

MAIL:

ABA Forum on the Construction Industry
321 N Clark Street
Chicago, IL 60610

FAX:

(312) 988-5677