This book focuses on the intersection between construction and insurance, an often overlooked but important topic. It is intended as a practice resource for construction lawyers, written by practitioners with expertise in both. Though few will read this book cover to cover, in front of a warm fire with a glass of sherry, for those so inclined it is organized in a start-to-finish fashion.

“Construction insurance” is a broad topic and a book with this scope risks trying to cover too much ground. To that end, we have tried to steer clear of a “treatise” approach. Instead, each chapter provides an overview of broad topic areas in the insurance context that are relevant to the construction lawyers, anchored very specifically to the construction context. We have encouraged our authors to provide resources for further reading.

Chapter 1 begins this book with an introduction to basic insurance and related construction concepts. Chapter 2 discusses insurance-related contract drafting considerations. Chapters 3 through 8 discuss each of the basic insurance products typically used for construction, with an emphasis on their place in the construction context—commercial general liability insurance, builders risk,’ professional liability insurance, and pollution insurance.

Chapter 5 considers the related concepts of construction contract indemnities and additional insured coverage in commercial general liability (CGL) policies. Performance bonds are not insurance policies and much has been written about them elsewhere. Still, as they are an important risk transfer device in the construction context, we believe they warrant discussion in this book. Thus, chapter 9 discusses performance bonds and contractor default insurance, which one might consider an insurance-based second cousin of the performance bond.

Chapters 10 through 12 discuss insurance considerations that implicate some or all of these insurance products. Chapter 10 discusses the “wrap-up” insurance model, and includes an in-depth explanation of how such programs work financially, and related contract considerations. The detailed financial analysis is a unique resource, and one that we are pleased to include in this book. Chapter 11 discusses the insurance claims “process” in the construction context. Chapter 12 concludes with a discussion of insurance coverage for delay-related damages under three types of insurance coverage and through performance bonds.

Samuel Johnson wrote that “[w]hat is written without effort is in general read without pleasure.” We are pleased by the quality and stature of the lawyers (and two nonlawyer insurance brokers) who authored these chapters, and can also attest to the significant effort that they put not only into researching their chapters but into writing clear prose as well. We believe that the effort will trans-
late into both utility and a good and pleasurable read. Thanks to each of these authors for their hard work and for their enduring significant editorial hectoring.

In addition to the authors, we owe thanks to the many other people who made this book possible. The editors thank their families for their patience as we put in the long hours necessary to bring such a project to fruition and for the support of their law firms and colleagues. The Forum’s publication committee was also a key resource, of course, and this book was first suggested by Adrian Bastianelli. Special thanks are due to Carol Patterson, Patrick O’Connor, Terry Galganski, and Andrew Ness of the Forum’s Publication Committee for their assistance, support, and chapter review and editing assistance. Thanks as well to ABA Publications and Sarah Forbes Orwig for their support and assistance in bringing this project to the finish line.

Thanks are also owed to George Meyer, current Forum chair, for his support and input. Deborah Ballati provided very substantial editing assistance with several chapters as we rushed toward the finish line. The editors also thank Laura Thomson, David Beck, Christian Henel, and Laura Bourgeois for significant editing and research assistance for numerous chapters. Claire Koltko provided copy editor oversight and invaluable help in bringing this project to completion.

Outside copyediting assistance was provided through the Forum’s Young Lawyer committee, with the assistance of J. Carson Fisk, and we thank each of the following lawyers for their diligent copyediting efforts under tight time constraints: Andrea L. Murdock, Deborah Walter, Jason Bergevin, Andrew Argyris, William Roach, Arthur T. (Ted) Farrell, Sarah R. Anchors, Paul W. Tschetter, Elsa J. Schmidt, Brian J. Dietz, Timothy Sansone, Neal J. Suit, Anthony T. Golz, and Amanda L. Schermer. Special thanks to Mr. Suit and Ms. Walter for copyediting their assigned chapters twice, when material changes were received after their first review.

Disputes frequently develop between policyholders and their insurers regarding the scope of and availability of insurance coverage for construction-related claims. Despite the existence of many standard form policies, interpretations may differ considerably. To the extent possible (and sometimes to authors’ and editors’ consternation), we have tried to present a balanced discussion of the issues from the point of view of both policyholders and insurers. The editors were selected with this balance in mind. (In fact, two of the editors have been opposing counsel in construction-related insurance coverage—one representing an insurer and the other a construction industry insured). Even so, opinions expressed in each chapter are those of the individual authors themselves, and are not necessarily those of their law firms or clients, the editors, their law firms, or clients.

Stephen D. Palley
Timothy Delahunt
John Sandberg
Patrick Wielinski
January 2011