



AMERICAN BAR ASSOCIATION FORUM ON CONSTRUCTION

IN COOPERATION WITH



WINDS OF CHANGE? The ConsensusDOCS



September 11-12, 2008

The Fairmont Hotel
Chicago, IL



PUBLICATIONS

PEOPLE

PROGRAMS

SERVING CONSTRUCTION LAWYERS THROUGH
EDUCATION, FELLOWSHIP AND LEADERSHIP



DEAR COLLEAGUES

The Forum's 2008 Fall Meeting takes us to the Windy City, where Chicago's spectacular skyline will be the backdrop to a program that will be as timely as it is important. This Fall's program is focusing on the new ConsensusDOCS family of construction contract documents that were rolled out last Fall. You may have already noticed that the ConsensusDOCS have been receiving national attention in such places as *Engineering News Record* and have been endorsed by more than 20 industry groups. Do these documents represent the winds of change? Well, maybe coming to the Windy City in the closing days of summer may be just what you need to find out and, more importantly, to stay ahead of the curve on this new family of construction documents that some of our clients are talking about.

On the opening day of our Program, lively interactive discussions with skilled panelists will take us from the inception of these forms — from those who were involved in their drafting — right through the “nuts and bolts” of the documents themselves. Our panelists will help us look at these forms with a critical eye and point out comparisons to the corresponding AIA forms where appropriate. You can come prepared to learn about the owner/contractor agreement, the owner architect/agreement, and how building information modeling (BIM) fits in. Some of our panelists will also take us through the ConsensusDOCS bond forms and help you navigate them. And to those of you who thought you've seen and heard it all, wait until you hear about the new tri-party or collaborative ConsensusDOCS form — a stark departure from traditional “us and them” approach we've come to expect on traditional contract forms.

Day 2 will introduce a series of “Friday Forums” where panelists will participate in interactive sessions (don't be shy: audience participation encouraged!) on topics such as subcontractor agreements, dispute resolution, another look at the architect agreements, and electronic data exchange. These “roundtable” discussions will give you a chance to hear from others and share your own experience. Other programs on the EJDC documents, WBE and DBE trends, and the ethical implications of tri-party agreements will round out what will be a information-packed morning that will make you glad you came

Our hotel, the Fairmont, is just steps away from Chicago's award-winning new Millennium Park. When you're not in the program, great dining, arts, museums, and architecture (check out the optional architectural cruise!) all await you. Is Chicago your kind of town? On September 11 and 12, it sure is. We look forward to seeing you there!

William M. Hill

PROGRAM CO-CHAIR

Mintz Levin Cohn Ferris Glovsky and Popeo, P.C. Boston, MA

Richard H. Lowe

PROGRAM CO-CHAIR

Duane Morris, LLP, Philadelphia, PA

L. Franklin Elmore

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*Conner Gwyn Schenck PLLC
Raleigh, NC*

Joseph D. West

*Gibson, Dunn & Crutcher LLP
Washington, DC*

PROGRAM SCHEDULE

WEDNESDAY, SEPTEMBER 10

3:00 – 5:00 PM

ADVANCED REGISTRATION/
INFORMATION

THURSDAY, SEPTEMBER 11

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

Robert J. MacPherson, Esq.

Thelen Reid Brown Raysman & Steiner LLP, New York, NY

8:40 – 8:45 AM

OPENING REMARKS AND
ANNOUNCEMENTS

William M. Hill, Esq.

Mintz Levin, Cohn, Ferris, Glovsky & Popeo, PC, Boston, MA

Richard H. Lowe, Esq.

Duane Morris, LLP, Philadelphia, PA

8:45 – 10:00 AM

**PLENARY 1: “DOES THE INDUSTRY NEED
ANOTHER SET OF FORM DOCUMENTS?”
ISN'T THE AIA ALREADY DOING THE
JOB JUST FINE?**

MODERATOR:

Larry D. Harris, Esq.

Greenberg Traurig, LLP; Washington, D.C.

PANELISTS:

J. William Ernstrom, Esq.

*Vice President, Strategic Major Project Advisor;
The Walsh Group; Chicago, IL*

Steven G.M. Stein, Esq.

Stein Ray & Harris, L.L.P.; Chicago, IL

Our moderator and panel will take us through ConsensusDOCS from first conception to the collaborative process that brought approximately 20 industry groups to the drafting table to shape, fit, mold and launch this comprehensive new family of contract documents. We'll look at how these documents came to be, some key provisions and components of the ConsensusDOCS and what, if anything, makes these documents so “different.” The panelists will share what practitioners need to know about ConsensusDOCS — including a comparison with their AIA counterparts — and debate the pros and cons of the various forms and key provisions and whether competing form documents is good for the industry.

10:00-10:15 AM

BREAK

10:15 – 11:15 AM

**PLENARY 2: “HEY, WHO'S IN CHARGE
HERE?” — THE CONSENSUSDOCS
OWNER-ARCHITECT AGREEMENT**

MODERATOR:

Penny P. Cobey, Esq.

McKenna Long & Aldridge LLP; Los Angeles, CA

PANELISTS:

Ricardo Aparicio, Esq., AIA

*Contracts Manager and Counsel, General Electric Company;
Birmingham, AL*

Jerome V. Bales, Esq.

Lathrop & Gage, LC; Kansas City, MO

In contrast to the traditional AIA forms, where the architect is the initial decision maker and the conduit for communications, the ConsensusDOCS approach encourages direct communications between Owner and Contractor. Our moderator and panelists will analyze how this approach plays out in practice and how to best assist clients in providing the practical advice and guidance to ensure the optimum project delivery.

11:15 – 11:30 AM

BREAK

11:30 AM – 12:30 PM

**PLENARY 3: GETTING IT BUILT: AN
OWNER'S VIEW OF CONSENSUSDOCS
AND WHAT MAY BE IN IT FOR THEM**

MODERATOR:

Cathleen S. Bumb, Esq.

Solutia Inc.; St. Louis, MO

PANELISTS:

J. Doug Pruitt

Chairman and CEO, Sundt Construction, Inc.; Tempe, AZ

William P. Tibbett

Past President, CURT Johnson + Johnson (Ret.); Brunswick, NJ

Is there anything in ConsensusDOCS for Owners? Our panelists will focus on such topics as the manner in which approved submittals become contract documents, how a contractor can demand owner's financial information during the project without reason, mutual waiver of consequential damages, excusable delays and requirements for payment of half of disputed amounts without prejudice.

12:30 – 1:30 PM

LUNCH

Professor Henry Binford,

Department of History, Northwestern University

1:45 – 2:45 PM

**PLENARY 4: “I DON'T WANT NO
CONSENSUSDOCS BOND FORM —
OR DO I?": CONSENSUSDOCS AND
SURETY BONDS.**

MODERATOR:

James E. Weatherholtz, Esq.

Buist Moore Snythe McGee, P.A.; Charleston, S.C.

PANELISTS:

Deborah S. Griffin, Esq.

Holland & Knight; Boston, MA

Catherine Squillace, Esq.

*Vice President and Counsel, Travelers Property Casualty
Corp.; Hartford, CT*

This program will look at bonding options under the ConsensusDOCS and focus on developments and trends in securing both performance and payment obligations on a variety of projects and project delivery systems. Our panelists will take an interactive view which will focus on a comparison between the AIA and ConsensusDOCS bond forms and offer practical advice on industry and legal trends on suretyship.

2:45 – 3:45 PM

**PLENARY 5: BIM BREAKS THROUGH:
THE CONSENSUSDOCS NEW BUILDING
INFORMATION MODELING (BIM)
ADDENDUM AND HOW TO MAKE IT
WORK FOR YOU AND YOUR CLIENTS**

MODERATOR:

Brian M. Perlberg, Esq.
*Senior Counsel, Associated General Contractors
of America (AGC); Arlington, VA*

PANELISTS:

Davis Chauviere, AIA
Principal & CIO; HKS, Inc.; Dallas, TX

Charles G. Hardy
*Deputy Director, Office of Property Development; U.S.
General Services Administration, Chicago, IL*

Jan Reinhardt,
*Program Manager; Turner Construction Company,
Pittsburgh, PA*

Building Information Modeling, intended to provide a ready and accessible standards-based repository of information for the construction and life-cycle of a facility, is revolutionizing the way we build and maintain structures. BIM is roaring into the 21st century and the new ConsensusDOCS BIM Addendum is intended to mesh BIM with design and construction agreements. This panel will discuss the legal issues for a project using BIM: ownership of the model; maintaining separation of design from construction; the role of an Information Manager; the role of insurance; force majeure; and more.

3:45 – 4:00 PM

BREAK

4:00 – 5:00 PM

**PLENARY 6: “OK, EVERYONE JOIN
HANDS:” THE BRAVE NEW WORLD OF
COLLABORATIVE DOCUMENTS
AND TRI-PARTY AGREEMENTS**

MODERATOR:

Suzanne M. McSorley Esq.
Stevens & Lee, PC; Princeton, NJ

PANELISTS:

James E. Frey
Senior Vice President; Alberici Group, Inc.; St. Louis, MO

Gregory A. Howell, P.E.
*Managing Director; Lean Construction Institute;
Louisville, CO*

Kevin F. Peartree, Esq.
Ernstrom & Dreste LLP, Rochester, NY

Michael A. Wilke
Hyder Consulting Pty Ltd; South Brisbane, Australia

The ConsensusDOCS 300 series represents a new approach to project delivery system centered around a Tri-Party Agreement signed by the owner, designer and constructor. It's not for everyone and requires leaving "old school" ideas at the door. Our panel will explain how the collaborative approach works on such topics as decision making, cost, risk sharing/allocation, incentives and dispute resolution. As owners, contractors and designers stand ready to leap into this new world, get some practical advice on whether it's the right thing to do for a specific project and what may be in store. This program will feature observations on how similar tri-party agreements have worked on other projects from panelists who have "been there and done that."

6:00 – 8:00 PM

WELCOME RECEPTION
Fairmont Hotel

FRIDAY, SEPTEMBER 12

7:30 AM – 12:00 NOON

REGISTRATION/EXHIBITION OPENS

7:30 – 8:30 AM

CONTINENTAL BREAKFAST

(Available to Paid Registrants)

8:15 – 9:15 AM

**FRIDAY FORUM A: SAVING THE TREES
AND MANAGING THE PAPER: THE
CONSENSUSDOCS APPROACH TO
ELECTRONIC DATA EXCHANGE
(AND SOME OTHER VIEWS, TOO)**

DISCUSSION LEADER:

David A. Scotti, Esq.
Duane Morris LLP; Pittsburgh Pa

PANELISTS:

Howard W. Ashcraft, Esq.
Hanson Bridgett LLP; San Francisco, CA

Kimberly A. Hurtado, Esq.
Hurtado, S.C., Wauwatosa, WI

***This Discussion Forum is presented with assistance
and cooperation of Division 2 (Contract Documents).***

Recognizing the construction industry's dramatic shift toward paperless communications, this Forum focuses on protocols and procedures used for preparing, managing and exchanging electronic project data. It will examine the ConsensusDOCS approach to electronic data exchange, comparing and contrasting it with AIA and EJCDC approaches, as well as discussing current applications and practices. This will be an open forum discussion, permitting sharing of best practices between audience and panel.

**FRIDAY FORUM B: GETTING OUT OF
A JAM: DISPUTE AVOIDANCE AND
RESOLUTION UNDER CONSENSUSDOCS
— HOW PRACTICAL IS IT?**

DISCUSSION LEADER:

Danny G. Shaw, Esq.
*Baker Donelson Bearman Caldwell & Berkowitz,
Mandeville, LA*

PANELISTS:

James P. Grotton, Esq.
Dispute Resolver; Atlanta, GA

Mark H. McCallum, Esq.
*General Counsel and Director of Government Relations;
National Association of Surety Bond Producers;
Washington, D.C.*

Ted Trauner
Trauner Consulting, Orlando, FL

***This Discussion Forum is presented with assistance
and cooperation of Division 1 (Dispute Avoidance
& Resolution).***

The ConsensusDOCS presents a dispute resolution "menu" where parties can select the manner of resolving disputes. Unlike its AIA counterpart, the architect has a more limited roll as first-tier decision maker. How does this work in practice? Our panel and discussion leader will take us through the strategies and practicalities of selecting the best manner of dispute resolution and navigating that dispute once it arises. Audience participation requested and encouraged for this open forum discussion.

FRIDAY FORUM C: WOMEN, MINORITIES AND DIVERSITY IN CONSTRUCTION: LOCAL AND NATIONAL TRENDS AND A CHANGING LANDSCAPE

DISCUSSION LEADER:

Carol Burns Duke
Bechtel Corp, Frederick, MD

PANELISTS:

Renee C. Benjamin, Esq.
Metropolitan Pier and Exposition Authority, Chicago, IL

Hilton Smith
Senior Vice President of Community Affairs,
Turner Construction; Cleveland, OH

This Discussion Forum is presented with assistance and cooperation of Division 10 (Legislation and Environment).

As government, institutional and private owners continue to shine the light on the need for diversity through all facets of their organizations, this workshop will focus on recent legislative and private developments and industry trends and diversity initiatives that may be coming to your neighborhood soon.

9:15 – 9:30 AM

BREAK

9:30 – 10:30 AM

FRIDAY FORUM D: OWNERS AND ARCHITECTS PART II: "I THINK THIS IS THE BEGINNING OF A BEAUTIFUL RELATIONSHIP."

DISCUSSION LEADER:

Richard J. Tyler, Esq.
Jones Walker, New Orleans, LA

PANELISTS:

Penny P. Cobey, Esq.
McKenna Long & Aldridge LLP; Los Angeles, CA

Jerome V. Bales, Esq.
Lathrop & Gage, LC; Kansas City, MO

This Discussion Forum is presented with assistance and cooperation of Division 3 (Design) and Division 12 (Owners and Lenders).

Some of the panelists from Thursday's Plenary 2 Session on Owner - Architect agreements follow on with this discussion forum with practice tips, pitfalls, and industry trends that impact the unique relationship between the Owner and Architect. Audience participation requested and encouraged.

FRIDAY FORUM E: DO THESE THINGS GIVE ME A FAIR SHAKE? CONSENSUSDOCS AND SUBCONTRACTORS

DISCUSSION LEADER:

G. Edgar James, Esq.
Shughart Thomson & Kilroy, P.C., Kansas City, MO

PANELISTS:

Philip E. Beck, Esq.
Smith, Currie & Hancock, LLP; Atlanta, GA

David R. Hendrick, Esq.
Hendrick, Phillips, Salzman & Flatt; Atlanta, GA

This Discussion Forum is presented with assistance and cooperation of Division 9 (Specialty Trade Contractors & Suppliers).

The ConsensusDOCS include a new form of subcontract which has gotten a buzz in the industry. This Discussion Forum will focus on such provisions — including some "hot buttons" — as indemnification, prompt payment, retainage, liquidated damages, liability insurance and others. Audience participation requested and encouraged.

FRIDAY FORUM F: AND NOW FOR SOMETHING ELSE THAT'S NEW: NEW PROJECT DELIVERY DOCUMENTS FROM EJCDC

MODERATOR:

Kerry L. Kester, Esq.
Woods & Aitken LLP; Lincoln LLP

PANELIST:

Hugh Anderson, Esq.
Akerman Senterfit, Madison, WI

This Discussion Forum is presented with assistance and cooperation of Division 4 (Project Delivery Systems).

The Engineers Joint Contract Documents Committee (EJCDC) recently issued an update to its core construction-related contract forms, which are heavily used in horizontal construction projects such as municipal and utilities construction. These 21 documents replace the previous 2002 edition and supplement over 40 other documents comprising the full EJCDC program. Our panelist will present what's new with these industry documents.

10:30 – 10:45 AM

BREAK

10:45 – 11:45 AM

CLOSING FORUM: COLLABORATIVE DOCUMENTS PART II: THE ETHICS AND PRACTICALITIES

DISCUSSION LEADER:

John Clappison, Esq.
The Colasanti Companies, Macomb, MI

PANELISTS:

Professor Carrie Menkel-Meadow
Georgetown University Law Center; Washington, D.C.

William A. Lichtig, Esq.
McDonough, Holland & Allen, PC, Sacramento, CA

This Discussion Forum is presented with assistance and cooperation of Division 5 (Contract Negotiations, Performance and Administration).

The growing use of tri-party and other collaborative agreements may sound alright. But what about the ethical pitfalls for the lawyers involved? Who's the client? To whom are the loyalties owed? What are the expectations? Are their obligations of disclosure? This panel, which includes a leading professor on legal ethics and practitioner highly experienced in collaborative documents will help lawyers navigate the shoals and stay off the rocks.

1:40 - 3:30 PM

ARCHITECTURAL RIVER CRUISE

PRESENTED BY THE CHICAGO ARCHITECTURAL FOUNDATION

Expert docents interpret the world-class architecture along the Chicago River. This tour spotlights more than 50 architecturally significant sites along the river where you will discover a new perspective on the city. **Ticket required.**



CONFERENCE INFORMATION

ADVANCE REGISTRATION

Please complete and return the attached registration form with your payment by **August 14, 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.

It is encouraged for you 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 are accepted online or 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 **August 14, 2008**, 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, 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 **August 14, 2008**. To receive a refund (less a \$50 administrative fee), cancellations must be made IN WRITING and RECEIVED on or before **August 14, 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 Fairmont Chicago, 200 N. Columbus Drive, Chicago, IL 60601. Reservations can be made by calling the hotel directly at (312) 565-8000. A room block has been reserved for our attendees at a rate of \$319 single/double room per night. After **August 18, 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.

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 ABAs 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 three or four 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 September 4, 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.

PROGRAM REGISTRATION FORM

HOUSING DEADLINE: AUGUST 18, 2008
REGISTRATION DEADLINE: AUGUST 14, 2008

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:

	<i>ON OR BEFORE</i>	<i>AFTER</i>
	<i>8/14/08</i>	<i>8/14/08</i>
<input type="checkbox"/> General Attendees	\$640	\$690
<input type="checkbox"/> Forum Members and Members of ConsensusDOCS organizations	\$540	\$590
<input type="checkbox"/> Government/Academic/ YLD	\$380	\$430
<input type="checkbox"/> Law Students	\$270	\$320
Subtotal	\$_____	\$_____

Please check one if you are:
 I am a New Member
 I am a First-Time Attendee

EDUCATIONAL REGISTRATION:

Friday, September 12
 8:15 - 9:15 AM (Make one choice)
 Forum A Forum B or Forum C
 9:30 - 10:30 AM (Make one choice)
 Forum D Forum E or Forum F

3. SOCIAL EVENT TICKETS:

Event:	Fee	Quantity	Total
Welcome reception	N/A	_____	N/A
Guest	\$65	_____	\$_____
Child (under 12)	\$30	_____	\$_____
Architectural River Tour	\$10	_____	\$_____
Subtotal			\$_____

4. 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):

5. MATERIALS ONLY:

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

6. TOTAL PAYMENT:

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

7. PAYMENT INFORMATION:

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

 Credit Card Number Expiration Date

 Signature

8. 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 60654

FAX:
 (312) 988-5677



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