December 2007

The newsletter of the ABA Forum on the Construction Industry

UNDER CONSTRUCTION

Colorado's New Anti-Indemnity Statute: Mere Splash or Next Wave?

By Terry J. Galganski
The Weitz Company LLC

Another state has acted decisively to eliminate certain contractual risk transfers that have been available to most parties involved in the state's construction industry – namely, indemnity and additional insured status. This time, it's Colorado. Its legislation makes no mistake about Colorado's path forward. It is unambiguous. It is all about public safety. It happened in April 2007 when Colorado's governor, Bill Ritter, signed into law Senate Bill 07-087, which became Colorado Rev. Stat. § 12-21-111.5 (6) (Statute).[1] This Statute affects nearly all construction agreements involving real property in Colorado that are executed on or after July 1, 2007.

Before addressing this Statute in greater detail, it is relevant to discuss the backdrop and recent trends of existing anti-indemnity statutes throughout the United States. As of this writing, forty-four states have enacted some kind of anti-indemnity statute[2]. But, in the last five years, there have been some significant signs of constriction in the breath of any construction-related indemnity or insurance to effectuate broad contractual risk transfer. Such examples include California's 2006 addition of Civil Code § 2782.8[3], Kansas and Kentucky's elimination of any indemnity for sole or partial fault of the indemnitee in 2004 and 2005 respectively[4], and, most relevant for this discussion, Montana, New Mexico and Oregon's recognition that neither an indemnity nor additional insured coverage will be allowed to protect another from its own actions via legislation in 2003 for the first two states and statutory confirmation via case law by an opinion issued by the Oregon Supreme Court in 2005.[5]

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Appointment of the Nominating Committee

The following people have been appointed to serve on the Nominating Committee, and to select and submit to the membership the nominees for the positions of Chair-Elect and four Governing Committee Members at Large:

CHAIR

Robert J. MacPherson Thelen Reid Brown Raysman & Steiner LLP
900 Third Avenue
New York, New York 10022

MEMBERS

Deborah S. Ballati
D. Robert Beaumont
C. Allen Gibson
Anne Gorham
Larry D. Harris
Danny G. Shaw

Nominations for Chair-Elect and Governing Committee Members-at-Large should be sent to the Chair of the Committee, Robbie MacPherson, by January 12, 2008. The election will be held during the business meeting of the Forum's Annual Meeting in April 2008. Nominations may be made by third persons and by self-nomination. All nominations or expressions of interest in being considered as a nominee should

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Defending Liberty Pursuing Justice

MESSAGE FROM THE CHAIR

Robbie MacPherson, Chair-Elect

Cold Beer. Ammo. Live Bait.

By Robert J. MacPherson
Thelen Reid Brown Raysman & Steiner LLP

The cold beer was usually Carling Black Label, Utica Club or Genesee. The bait was usually worms. I don't think I ever bought any ammo from the little store in North Creek, New York with that sign out front. (If I did, they were 22s to shoot the beer cans and bottles).

The Forum has a sign out front that says "Lawyers Serving the Construction Industry Through Education and Leadership" – not as catchy as that sign in North Creek, but it does capture the essence of the Forum. Leadership through example is the most effective kind. Educators understand they must be well educated before they can help others learn. The Forum is doing a good job at both leading and educating.

The Forum took a big step along the Leadership road this year when it became a National Sponsor of the ACE Mentor Program.

ACE is a program that focuses on high school students to increase the awareness of career opportunities in architecture, construction and engineering through mentoring. ACE also provides scholarship opportunities. ACE is made up of construction industry professionals, educators and others, including lawyers, many of whom who serve as mentors. Students and mentors are grouped into teams and assigned a mock project to build as a way to introduce them to the various roles individuals and companies play in construction process. In addition to project team meetings, there are team activities such as job site visits and college nights where educational opportunities are explored. The program concludes with a presentation night where each team presents its project to the other teams, their families, teachers and mentors.

ACE was started in New York City in 1994 and now has a presence in over eighty cities. Since its start, more than 30,000 students, many from low income families, have been mentored in the program. At an ACE event I attended this spring, several students who had started in the program while in high school were introduced as the newest mentors. They had graduated with degrees in architecture, construction management or engineering, started their careers in the industry and were, as one said, ready to give back to a program that had given them their start.

Education has always been at the core of the Forum's mission. A recent program and several planned in the future will examine what could prove to be major changes in the way the construction industry operates. On October 16, the Forum held what I believe to be first program exploring the recently released ConsensusDOCS. Over 150 people participated in a teleconference that examined the concepts that went into the development of documents proponents claim have the potential to replace the AIA documents as the industry standard. At our Fall meeting to be held at the Fairmont Hotel in Chicago on September 11 and 12, 2008, we will review the ConsensusDOCS in detail. Attorneys and industry representatives who were involved in the development

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Cold Beer. Ammo. Live Bait.

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of the documents and those who will be studying and using them over the next year will road test the ConsensusDOCS and give us their reviews. The program will also feature forums in which the Forum's Divisions will look at these documents from their own unique perspectives.

In the more immediate future, the Forum will turn its attention to the 2007 edition of the AIA documents, the industry standard for at least the foreseeable future. In a program being held twice, the first time on January 31, 2008 in New York City and then repeated on February 7 in San Antonio, Texas, we will learn what significant changes were made to the A201 General Conditions and why. The brand new B101 Owner/Architect Agreement will be also featured, as well as the AIA's Digital Rights Document. We will hear about the lessons learned, and those that should have been but were not, since 1997 when the AIA documents were last revised. Practical advice will be given on how to apply those lessons in negotiations and litigation.

Our regional program in November 2008 will be based on *THE Construction Contracts Book*, which will be updated to address the ConsensusDOCS and the new AIA documents.

Many Forum members teach construction law and more and more law schools are adding construction law to their curriculums. To serve that growing need the Forum will be publishing a construction law text book which should be available for classes in 2008 or early 2009. Exposing law students to construction law will help us attract the talent we will need to serve our clients and the industry in the future, something we are helping ACE do at the high school level.

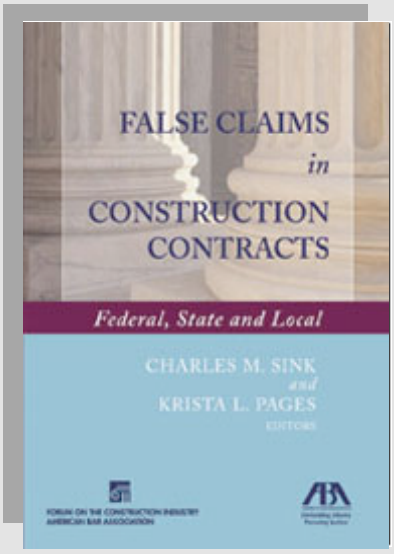
Finally, some words of thanks, farewell and welcome. Alana Sullivan, the Forum's Manager responsible for coordinating all of our activities, including the Governing Committee, the Divisions, and program logistics for the past five years, has left the ABA for a job in the private sector. Alana was an integral part of the Forum's success and we wish her all the best. And we welcome Shannon Harrity, our new Manager. Shannon has been with the ABA for three years, assisting several committees of the Labor and Employment Section with their programs, and we very much look forward to working with her.

P.S.: North Creek is in the Adirondack Mountains in upstate New York. It is an incredibly beautiful part of the country and I heartily recommend you visit it. And don't forget to pick up your empties. ♦

False Claims in Construction Contracts: Federal, State and Local

Charles M. Sink and Krista L. Pages, Editors

This book examines what is often a "bet-the-company" area of construction law. In the last two decades, the federal government and whistleblowers have prosecuted billions of dollars in claims brought under the False Claims Act, with a substantial number arising from construction projects. There are many ways that construction projects can fall under the False Claims Act, including making one or more false payment applications or filing a false statement which is just part of a request for compensation. The civil penalties are severe: statutory penalties plus treble the amount of damages sustained by the government because of the fraud.



False Claims in Construction Contracts is an essential deskbook for civil and criminal litigators, as well as transactional counselors of contractors, subcontractors, suppliers, designers, project and construction managers, and owners. It provides a complete grounding in a complex area of federal and state law. It begins with a brief history and overview of the act, focusing on the sweeping changes made in the 1986 overhaul. A subsequent chapter details the issues involved in a private citizen bringing a *qui tam* action under the False Claims Act. The balance of **False Claims in Construction Contracts** focuses on all aspects of construction-related claims under the FCA, including discussion of the landmark *Daewoo* case; bid rigging and collusive bids; damages and penalties; retaliation claims; and criminal prosecution of FCA defendants. The final chapter offers a state-by-state summary of state false claims liability.

2008, 354 pages, 7 x 10, paperback, ISBN: 1-59031-925-3
Regular Price: $179.95
Forum on the Construction Industry Member Price: $149.95
Government Price: $139.00 (Available by calling the ABA Service Center at 1-800-285-2221)
Product Code: 5570211

Colorado's Anti-Indemnity Statute

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As reflected in these last three examples, Colorado has adopted similar restrictions with its Statute. Except for certain exceptions mentioned below, the Statute eliminates the enforceability of all broad and intermediate indemnity provisions and severely narrows additional insured coverage in Colorado construction contracts. Its enactment knocks over the existing, anti-indemnity statutory "apple cart" in Colorado, which had essentially rendered unenforceable only those provisions in public construction contracts that indemnified public entities for their negligence.

As relevant as these prohibitions are the several findings made by the Colorado's General Assembly that are set forth in the Statute's first section, which clearly reflect the comparative negligence cornerstone of Colorado's tort reform legislation that occurred in 1986:[6]

(I) It is in the best interests of this state and its citizens and consumers to ensure that every construction business in the state is financially responsible under the tort liability system for losses that a business has caused;

…

(III) Construction businesses in recent years have begun to use contract provisions to shift the financial responsibility for their negligence to others, thereby circumventing the intent of tort law;

(IV) It is the intent of the General Assembly that the duty of a business to be responsible for its own negligence be nondelegable;

…

(VII) **If all businesses, large and small, are responsible for their own actions, then construction companies will be able to obtain adequate insurance, the quality of construction will be improved, and workplace safety will be enhanced.** (Emphasis supplied.)[7]

Following these findings, the Statute sets forth the following constraints on every Colorado "construction agreement", which is so broadly defined to essentially include all future construction between any construction industry participant in Colorado[8] except for its specific exclusions for contracts that involve property owned by railroads and various water, sanitation or sewage districts or leases, including construction concerning such rental properties:[9]

Any provision that requires a person to "indemnify, insure or defend" another for damages or injuries caused by the negligence or fault of that party "is void as against public policy and unenforceable."[10]

Any provision to indemnify or insure another will not be for "any amounts greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitor or the indemnitor's agents, representatives, subcontractors or suppliers."[11]

Any provision "that requires the purchase of additional insured coverage for damage[s] … from any acts or omissions that are not caused by the negligence or fault of the party providing such additional insured coverage is void as against public policy."[12]

Furthermore, the Statute also preempts any choice of law provision that any party may wish to draft in these construction agreements, maintaining that this Statute will control in "every construction agreement affecting improvements to real property within the state of Colorado."[13] All in all, Colorado represents, in the author's opinion, a growing trend to eliminate risk transfer by indemnity and additional insured coverage. This trend may become more than a splash. Colorado may start the wave.

* * *

[1] A good overview article on this new legislation is Brian G. Eberle's "S.B. 07-087 and the Enforceability of Indemnification Provisions in Colorado Construction Contracts", 36 The Colorado Lawyer 59 (Sept 2007) (Eberle's Article).

[2] These states include AK, AZ, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV and WI.

[3] In the fall 2006, AB 573 was signed into law, eliminating any passive negligence protection to local public agencies (it specifically excludes the State of California) in professional services agreements entered into on or after January 1, 2007.

[4] See Kansas Stat. § 16-121 and Kentucky Rev. Stat., chap. 371.

[5] See Montana Rev. Code § 28-2-2111, N.M. Rev. Stat. § 56-7-1 and Ore. Rev. Stat. § 30.140 and Walsh Construction Co. v. Mutual of Enumclaw, 104 P.2d 1146 (Ore. 2005).

[6] Eberle's Article, p.59.

[7] Col. Rev. St. § 13-21-111.5 (6)(a).

[8] Col. Rev. St. § 13-21-111.5 (6)(e)(I).

[9] Col. Rev. St. § 13-21-111.5 (6)(e)(II).

[10] Col. Rev. St. § 13-21-111.5 (6)(b).

[11] Col. Rev. St. § 13-21-111.5 (6)(c).

[12] Col. Rev. St. § 13-21-111.5 (6)(d).

[13] Col. Rev. Stt. § 13-21-111.5 (6)(g).

Downstream Allocation of Concurrent Delay Damages

By Michael F. Drewry and Daniel M. Drewry
Drewry Simmons Vornehm, LLP

Can liquidated or other delay damages attributable to concurrent delay be allocated by the general contractor among responsible subcontractors? If so, what are the guidelines for doing so? The short answer to the first question is yes. Case law addressing concurrent delays generally permits the allocation of delay damages to the responsible party, including subcontractors. However, jurisdictions approach concurrent delays and apportionment of damages related to these delays differently, thereby adding additional layers of complexity to an analysis that already contains substantial inherent proof obstacles. This article, which is presented in two parts, provides a general framework within which the downstream allocation of concurrent delay damages can be analyzed, as well as offering suggestions as to how this analysis may be shaped through the contract documents.

In this issue of *Under Construction*, we define the problem and identify relevant issues in concurrent delay analysis.

Defining the Problem – Concurrent Delay

Concurrent delays arise when two or more independent delay events take place within the same time or delay period and affect both the owner and contractor (or the contractor and its subcontractors in a lower-tier relationship). These delay events could all relate to one activity or to multiple activities. Concurrent delays may affect a contractor's or subcontractor's claim if one delaying event is excusable and the other one is not, or if one such cause is compensable and the other is non-compensable. Where such conflicting causes of delay exist, the entitlement to time or money may be threatened.

Concurrent delay also can occur when both parties are responsible for delaying the same critical activity over the same time period, or when each party delays a separate critical activity at the same time (where there were multiple, interrelated critical path activities). Concurrent delays have both a causal and temporal component. *George Sollitt Constr. Co. v. U.S.*, 64 Fed. Cl. 229 (Fed. Cl. 2005). Both delays must be independent of one another. Id.; *see Beauchamp Constr. Co. v. U.S.*, 14 Ct. Cl. 430 (1988). In other words, the contractor's delay cannot be as a result of, or contingent upon, the other party's delay, or vice versa.

Concurrency issues are most often discussed in the context of the owner-general contractor relationship, when one delay is the responsibility of the owner and the other delay is borne by the contractor. However, the analysis utilized in the owner-general contractor cases works at all levels of vertical privity. *See e.g., Williams Enters., Inc. v. Strait Mfg. & Welding, Inc.*, 728 F.Supp. 12 (D.D.C. 1990); *Tuttle/White Constructors, Inc. v. Montgomery Elevator Co.*, 385 So.2d 90 (Fla. 1980); *Travelers Indem. Co. v. Peacock Constr. Co.*, 423 F.2d 1153 (5th Cir. 1970); *Alcan Electrical & Engineering Co., Inc. v. Samaritan Hospital*, 109 Wash. App. 1072, 2002 WL 26291 (Wash. App. Div. 3 2002); *Pathman Constr. Co. v. Hi-Way Elec. Co.*, 65 Ill.App.3d 480, 382 N.E.2d 453 (1978). As such, the same framework applied upstream should generally work downstream through the chain of privity.

Generally, whenever concurrency is demonstrated (i.e., when both parties cause a delay to the critical path at the same time) the delays are said to be concurrent and the courts will deny the claimants relief, or attempt to *apportion* concurrent delays between the parties. *See, e.g.*, *PCL Constr. Serv., Inc. v. U.S.*, 53 Fed. Cl. 479 (2002); *Blinderman Constr. Co. v. U.S.*, 695 F.2d 552 (Fed. Cir. 1982). The burden of proof falls on the party seeking to recoup damages for delay to show that the claimed delay was not concurrent. *Coath & Goss, Inc. v. U.S.*, 101 Ct.Cl. 702 (1944). If concurrent delay cannot be disproved, then the courts will not be able to separate the delay and will very likely not be able to award delay damages. Consequently, the definition and the appropriate analysis of concurrent delay are critical to a delay analysis.

Apportioning the Delay

Courts generally have taken three approaches to analyzing claims when contract performance is delayed due to causes attributable to both the owner and contractor, or contractor and subcontractor.

First, the traditional view has been that if the delays were inextricably intertwined, the owner was prevented from assessing liquidated damages against the contractor, while the contractor, because of his partial responsibility, was similarly not entitled to seek damages. *See Sollitt, 64,* Fed. Cl.229; *Acme Process Equipment v. U.S.*, 171 Ct. Cl. 324, 347 F.2d 509 (1965), *rev'd on other grounds*, 385 U.S. 138 (1966). The same analysis would hold true for contractors *vis-a-vis* subcontractors. *See, e.g., Alcan supra,* 109 Wash. App. 1072; *J. A. Jones Constr. Co. v. Greenbrier Shopping Center*, 332 F. Supp. 1336 (N.D. Ga. 1971).

Second, the modern approach is to determine whether the delay can be apportioned between the parties. If the delay can be allocated among

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Nominating Committee

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include a resume, and a written submission that details the nominee's activities in the Forum, the ABA and the legal profession. In addition, the Committee is interested to know about any initiatives or practices that the nominees are interested in proposing while serving in the position sought.

The Nominating Committee will convene its first meeting in conjunction with the Forum's Midwinter program, which will occur on February 8, 2008. Any questions or concerns regarding the nominating process can be answered by Robbie; feel free to contact him directly.

The future of the Forum rests securely on the strength of its membership. We welcome those of you who wish to stand and serve to do just that by participating in this important process.

Michael D. Tarullo, Forum Chair

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the parties, the courts will allow proportional fault to govern recovery, akin to a comparative fault analysis. *See e.g.*, *Essex Electro Engineers, Inc. v. Danzig*, 224 F.3d 1283 (Fed. Cir. 2000); *Tyger Constr. Co., Inc. v. U.S.*, 31 Fed. Cl. 177 (Fed. Cl. 1994); *E. C. Ernest, Inc. v. Manhattan Constr. Co. of Texas*, 387 F. Supp. 1001 (S.D. Ala. 1974).

A third, related way of looking at concurrent delay utilizes a network or critical path method ("CPM") to identify and determine critical path delays and the party responsible for those delays. Under this analysis, the court segregates the delays along the critical path and allocates the delay to the responsible party accordingly. *See, e.g.*, *Fishbach and Moore Int'l Corp.* ASBCA 18146, 77-1 BCA ¶12,300, *aff'd* 223 Ct.Cl. 119, 617 F.2d 223 (1980). Cases that reach conflicting results are usually distinguishable by their inability to separate delays between the parties.

Define Concurrency: The critical first step in the analysis is to identify how your jurisdiction defines concurrency. The definition of concurrency will set out the measuring stick for identifying concurrent delay events.

The simplest definition of concurrency (stated above) is the occurrence of two or more independent delay events within the same time period or delay period. Nevertheless, concurrency has also been defined in the context of network scheduling as a relationship between activities that is neither subsequent nor precedent. Barry B. Bramble & Michael T. Callahan, *Construction Delay Claims* § 1.01[D] (3d ed. 2000). This definition of concurrency means the start of work on one of the activities is not dependent on the completion of another. This definition of concurrency does not necessarily require that the activities be performed simultaneously. Concurrency can be chronological or simultaneous. *Id.*

Identify the Operational Time Frame: Regardless of the definition of concurrency utilized, the common denominator is multiple delay events within a given time frame. But what is that operational time frame in which the delay events must occur? Traditionally, concurrent delays had to occur simultaneously. *See, e.g.*, *Morganti Nat., Inc. v. U.S.*, 49 Fed. Cl. 110 (Fed.Cl. 2001); *see also* Bramble & Callahan, *supra*. However, that rule has evolved and given way to a broader classification of the operable time frame.

Generally, courts will not require that the time period for each delay event be identical. The delay events may occur over different time periods but be related by circumstances or conditions. *See, e.g., Raymond Constructors of Africa, Ltd. v. US*, 411 F.2d 1227 (Ct. Cl. 1969); *McDevitt & Street Co. v. Marriott Corp.*, 713 F.Supp. 906 (E.D. Va. 1989), *rev'd on other grounds*, 948 F.2d 1281 (4th Cir. 1991). A review of the cases addressing concurrent delay shows that the operational time frame in which concurrent delays occur could range from several days to several weeks within the context of the project.

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Editor's Message

One dictionary defines "forum" as

1. The public square or marketplace of an ancient Roman city that was the assembly place for judicial activity and public business.

2. A public meeting place for open discussion.

3. A medium for open discussion or voicing of ideas, such as a newspaper, a radio or television program, or a website.

4. A public meeting or presentation involving a discussion usually among experts and often including audience participation.

To the ancient Romans, the Forum with a capital "F" meant the sprawling, bustling marketplace near the Colosseum. To construction lawyers, the Forum is our home within the ABA, built atop the foundation stones of "Programs, Publications and People." In future issues, we'll be bringing you more news from the Divisions and reports of other activity within the Forum. Drop me a line (jcruz3@bear.com) or find me at a Forum meeting if you have any ideas about what you want to see in *Under Construction*. Think of this as your forum in the Forum.

Downstream Allocation of Concurrent Delay Damages

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In fact, in its broadest sense, the concurrency period could extend to the life of project performance.

Determine the Criticality of the Delay Events: An additional component of the analysis of concurrent delay is whether the separate and independent delay events are critical. In many jurisdictions, the concurrent delays must also lie on the critical path or impact the completion of the project. *See e.g., McDevitt*, 713 F. Supp. 906; *Williams Enterprs.*, 728 F. Supp. 12; *E.C. Ernst*, 387 F. Supp. 1001. In such jurisdictions, if two simultaneous delays occur but one is not on the critical path, there is no concurrent delay. As such, a thorough review of the project schedule is paramount.

Segregate Delay Impacts and Costs: To flow concurrent delays downstream, the next step requires parsing project records to identify discrete acts of delay amongst the trade contractors. Once those delays are identified, determine whether the delay is non-excusable, and if so, determine whether there is a compensable delay. If so, damages must be identified and isolated by each critical path delay by trade. Hand-in-hand with this factual analysis is the contractual one - identifying the particular terms of the applicable subcontracts that permit the flow-down of unexcused delay damages. Finally, the concurrent delays are apportioned and flowed-down to the responsible subcontractor. In doing so, absolute certainty regarding the exact apportionment of damages is generally not required. *See Alcan*, 2002 WL 26291; *see Pathman*, 382 N.E.2d at 460. The general contractor may be able to allocate the entire concurrent delay to one subcontractor, making the subcontractor liable for the entire delay, if that subcontractor is shown to be responsible for a substantial portion of the delay. *See e.g., Williams Enterprises, 728* F. Supp. 12; *Tuttle/White Constructors,* 385 So. 2d 90. Ultimately, the apportionment is an issue for the trier of fact.

While straight-forward in theory, any concurrent delay analysis is extraordinarily fact-sensitive and often inherently complex. Proving or refuting concurrent delay requires an accurate and updated network or CPM schedule. Reliable contemporaneous project documentation is crucial. Apportionment of concurrent delay may also require the construction of a detailed as-built schedule, a task most often performed by a construction claims expert.

In the next issue, we will explore the defenses to apportionment, and will suggest ways to control outcomes through contract documents. ♦

The Construction Lawyer Seeks New Associate Editor

Our sister publication in the Forum, *The Construction Lawyer,* is accepting applications for the position of Associate Editor. Interested persons should send, by January 18, 2008, a resume and brief statement of qualifications to the Chair of the Forum Publications Committee:

Adrian L. Bastianelli, III
Peckar, Abramson, Bastianelli & Kelley
abastianelli@pecklaw.com
Phone (202) 293-8815
Fax (202) 293-7994.

Applications should include a list of Forum activities.

The Forum Gives Back to the Industry

By John R. Heisse, II
Thelen Reid Brown Raysman & Steiner LLP

Last year, the Governing Committee committed to making charitable donations that would "make a difference" in the communities which the Forum's members serve. The first recipient of a Forum grant is the ACE Mentor Program. Founded by the principals of leading design and construction firms, ACE's mission is twofold: to enlighten and motivate high school students toward careers in architecture, construction and engineering (hence "ACE"); and to provide mentoring opportunities for future designers and constructors. ACE makes a special effort to reach students who might not otherwise become aware of the challenges and rewards of a career in the building industry. By sponsoring ACE at the national level, the Forum is truly giving back to the industry we serve.

John Heisse is a past Forum Chair and the Forum's liaison with ACE.

Save These Dates!

January 31, 2008 – The Midwinter Meeting at the Sheraton New York Hotel in New York, NY. Hotel Cut-Off: January 11, 2008.

February 7, 2008 – A repeat performance of the Forum's Midwinter Meeting program at the Westin Riverwalk Hotel in San Antonio, TX. Hotel Cut-Off: January 4, 2008.

April 24-25, 2008 – The Annual Meeting at La Quinta Resort & Spa in LaQuinta, CA. Hotel Cut-Off: March 24, 2008.

September 11-12, 2008 – The Fall Meeting at the Fairmont in Chicago, IL. Hotel Cut-Off: August 18, 2008.

The Forum's **Women and Minority Fellowship Committee** is accepting applications for 2008. For more information, visit the Forum's website: www.abanet.org/forums/construction/docs/women_and_minority_fellowship.pdf

Join Us in New York City and San Antonio, Texas For Our 2008 Mid Winter Meetings!

WHAT: In 2008, The Construction Forum will hold its Midwinter Program in two convenient locations - New York, NY or San Antonio, TX. The American Institute of Architects (AIA) has recently published its new suite of design and construction documents. This conference will focus on two major agreements: (1) The A201 General Conditions Document, and (2) the B101 Owner/Architect Agreement. The AIA documents in many respects reflect an industry consensus with respect to a number of issues and practices. A detailed working knowledge of these agreements is critical to any construction practice, whether you prepare construction contracts or litigate claims. You will learn not only what is new, but also its importance given what has not changed. We have gathered practitioners that have extensive working knowledge of these agreements, and a number of individuals involved directly in the drafting process. You will get an inside view of how these documents were crafted.

WHEN/WHERE:

January 31, 2008
Sheraton NY Hotel & Towers
811 Seventh Avenue
New York, New York 10019
Reservations: (212) 581-1000

February 7, 2008
Westin Riverwalk
420 West Market Street
San Antonio, Texas 78205
Reservations: (210) 224-6500

TELL ME MORE: Please register for either conference by January 17, 2008 to receive the discounted conference rate. We look forward to seeing you in San Antonio and New York. The conference brochures are available at:

www.abanet.org/forums/construction/featured_program/newyork08.pdf

www.abanet.org/forums/construction/featured_program/sanantonio08.pdf.

UNDERCONSTRUCTION

The newsletter of the ABA Forum on the Construction Industry

December 2007

Lawyers Serving
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Through Education and Leadership

American Bar Association
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