

23RD ANNUAL CONSTRUCTION LAW CONFERENCE

February 25 & 26, 2010 ♦ The Westin La Cantera Resort ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, FEBRUARY 24, 2010

7:00 Young Lawyers Reception - Sponsored by Synergen Consulting

THURSDAY, FEBRUARY 25, 2010

PRESIDING OFFICER: William B. Short, Jr., Dallas

8:00 **LATE REGISTRATION** – Ballroom Foyer, Westin La Cantera Resort
16641 La Cantera Parkway, San Antonio, TX 78256, (210) 558-6500

8:00 **CONTINENTAL BREAKFAST**

8:50 **WELCOME ON BEHALF OF THE CONSTRUCTION LAW SECTION**

Richard W. Wiseman, Fort Worth

9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.

Joseph F. Canterbury, Jr., Dallas

CD#1

9:45 **RESIDENTIAL CONSTRUCTION LAW UPDATE** – It's a new old world out there: The Legislature has sent the TRCCA off into the sunset. However, did the Act end at midnight of 8/31/09; will it come to an end at midnight of 8/31/2010; or some combination? The Chair of the TRCC will share his thoughts on the current status of residential construction law.

J. Paulo Flores, Dallas

CD#2

10:30 **BREAK** - Sponsored by Nelson Architectural Engineers, Inc.

10:45 **SO YOU THOUGHT YOU WERE JUST A CONTRACTOR** – Performance specs; Shop Drawings; Value Engineering; Failure to catch design errors by architect; Compliance with laws (i.e. building codes) which could be argued to exceed means methods; insurance coverage; suggested limitation of liability clauses.

W. Kyle Gooch, Dallas

CD#3

11:15 **WORKSITE TRAGEDIES** – Guiding a client through the aftermath of a worksite tragedy: How to coordinate multiple legal disciplines involving often-conflicting principles of tort, contract and employment law, insurance coverage, safety, health and environmental regulatory enforcement actions and criminal investigations; Attention to ethical dilemmas that frequently arise, and ways to deal with them.

Keith Coulter, Houston

CD#4

12:00 **LUNCHEON** - Tickets may be purchased for \$25 each.

Topic: GETTING THE BUSINESS – The ethics of marketing, advertising, and rainmaking in a down economy.

Speaker: William J. Chriss, Austin

CD#5

1:15 **CONSEQUENTIAL AND DAMAGES FOR DELAY** – A review of contractual devices to waive, limit, or to liquidate damages, including legal and practical limitations on their use.

William R. Allensworth, Austin

CD#6

1:45 **ARBITRATION PANEL** – Three knowledgeable and experienced arbitrators will share their views on a variety of topics that arise in arbitration, including what constitutes effective arbitration presentation, the role of dispositive motions, limiting discovery and running a cost effective and efficient process and what persuades arbitrators. Conference participants will be invited to submit questions for the panel to review.

Moderator: George C. Baldwin, Austin

Panelists: Frank McFadden, Montgomery, AL

Allison J. Snyder, Houston

Stephen K. Yungblut, Arlington

CD#7

2:45 **BREAK** - Sponsored by Haag Engineering

3:00 **DOWN AND DIRTY AGREEMENTS** – Design and Construction Contracts for "Small Projects". Contracting for smaller projects can pose unique problems for owners, design professionals and contractors. The risk/reward ratio is quite different for smaller projects because the "risks" are not necessarily tied to the monetary size of the contract, but the "rewards" are. This paper will discuss design and construction contracts for smaller projects from an owner's perspective that are appropriate in scale and fairly allocate risk – for both sides of the respective contract.

Robert C. Bass, Jr., Austin

CD#8

3:45 **NEGLIGENT MISREPRESENTATION CLAIMS AGAINST DESIGN PROFESSIONALS** – When does bad design become a negligent misrepresentation? Survey of current authority on a contractor's right to seek recourse against design professionals under the theory of negligent misrepresentation. Discussion will also cover elements of the negligent misrepresentation cause of action, applicability of the economic loss doctrine, comparative negligence and recoverable damages.

Jeffrey A. Ford, Dallas

CD#9

4:15 **MANAGING RISK IN AN UNCERTAIN ENVIRONMENT** – A discussion of the legal, business, and operating problems facing contractors and owners in the current unfavorable economic climate, and the practices necessary for survival. What are the appropriate legal risks to take in an atmosphere of reduced rewards, and what are the available risk management tools? Review and consider new perspectives on specific Texas statutory and legal rights, and remedies available to the parties for their protection.

Michael F. Albers, Dallas

CD#10

5:00 **RECEPTION** – Sponsored by Rimkus Consulting Group, Inc.

FRIDAY, FEBRUARY 26, 2010

8:00 **CONTINENTAL BREAKFAST**

8:30 **LEGISLATIVE UPDATE** – Update on legislation of interest to the construction industry that either passed or failed in the last Texas Legislative Session: Trust Fund Statute Revisions, Attorneys' Fees Recovery against Public Owners, Demise of the Texas Residential Real Estate Commission, and a discussion of the Anti-Indemnity Bill and Alternative Delivery bills that didn't make it and will probably be seen again.

Steven D. Nelson, Austin

CD#11

9:15 **NEWS AND GOODS? OR, OLDS AND AWFULS? Hammers, Nails and Levels: The American Recovery and Reinvestment Act, and an Update on Contractor Ethics** – Put your hard hat, boots and safety glasses on! The American Recovery and Reinvestment Act ("ARRA") and its impact on Texas construction contractors will be reviewed. Examine selected issues stemming from ARRA that are of interest to Texas construction law practitioners and get the latest developments in the area of mandatory disclosure and contractor ethics.

.25
Ethics

Joan Kelley Fowler Gluys, San Antonio

CD#12

9:45 **SMALL BUSINESS PROGRAMS, DOMESTIC PREFERENCE AND LABOR POLICIES IN FEDERAL AND STATE PROCUREMENT** – How does the Small Business Administration Minority/Small Business Program Work? Is the Texas Historically Underutilized Business Program similar? What is the Buy American Act? Does it have a counterpart in Texas public procurement? What is the Davis Bacon Act? A survey of current statutes and authority provide a basic understanding of the various federal and Texas programs dealing with small or minority-owned businesses, how the Buy America Act works and prevailing wage labor rates for various federal and Texas public procurements.

Timothy D. Matheny, Dallas

CD#13

10:15 **BREAK** – Sponsored by McCullough & Associates

10:30 **TIPS FROM THE BENCH** – Want to know what experienced judges think of your advocacy skills? Listen up! Hear tips and traps of trying a construction case, as seen from the bench.

Moderator: Gregory M. Cokinos, Houston

Panelists: Honorable John A. Coselli, Houston

Honorable Karen Pozza, San Antonio

Honorable Randy Wilson, Houston

CD#14

11:30 **CONTRACT CLOSEOUT – IF YOU BUILD IT, WILL THEY PAY?** A discussion of construction contract closeout requirements and "hot buttons" from the contractor's perspective.

Tonya Johannsen, Dallas

CD#15

12:00 **LUNCHEON** - Tickets may be purchased for \$26 each.

Topic: THE ETHICS BUFFET – A luncheon discussion serving small portions of ethics information covering a tasty variety of topics for the construction lawyer. All you can eat. Antacids will be available.

Speaker: Jeffrey R. Jury, Austin

CD#16

1:15 **BUILDER'S RISK** – A discussion of builders' risk requirements and strategies.

Charles E. Cominsky, Houston

CD#17

2:00 **INSURANCE UPDATE** – An update on the top insurance cases of 2009 that affect construction law practitioners as well as a discussion of important cases that are in the pipeline.

Lee H. Shidlofsky, Austin

CD#18

2:45 **MECHANIC'S LIENS – FROM CRADLE TO GRAVE** – A discussion of the mechanic's lien laws focusing on inception and the relation back doctrine and the actual foreclosure process. The discussion will also address what materials qualify as removables, how to foreclose them and what rights they afford a claimant.

Fred D. Wilshusen, Dallas

CD#19

3:30 **ADJOURN**

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