

32ND ANNUAL CONSTRUCTION LAW CONFERENCE



FEBRUARY 28 & MARCH 1, 2019
THE LA CANTERA RESORT & SPA
SAN ANTONIO, TEXAS

Earn up to 14.25 Hours MCLE Credit, including 2.25 Hours Ethics!

Applicable toward MCLE, the College of the State Bar of Texas and the Texas Board of Legal Specialization in the fields of Construction Law, Real Estate Law, Personal Injury Trial Law, Civil Appellate Law and Civil Trial Law. Eligible for Texas Department of Insurance credit and MCE credit through the Texas Real Estate Commission.

Sponsored by:

**The Construction Law Foundation of Texas
&**

The Construction Law Section of the State Bar of Texas

in cooperation with

The Texas Institute of Continuing Legal Education

32ND ANNUAL CONSTRUCTION LAW CONFERENCE

February 28 & March 1, 2019 ♦ The La Cantera Resort & Spa ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, FEBRUARY 27, 2019

- 12:30 **GOLF TOURNAMENT** – *Shot Gun Start*
The Palmer Course at The La Cantera Resort
- 4:00 **TEXAS WOMEN'S CONSTRUCTION LAW GROUP FORUM** – Plan on arriving at the hotel early to meet your fellow female construction lawyers at the TWCLG annual networking event. *Please indicate your RSVP on the registration form.* – Sponsored by Veritas Advisory Group, Inc.
- 6:15 **RECEPTION** – In cooperation with the Young Lawyers Council of the Construction Law Section – Sponsored by McCullough & Associates

THURSDAY, FEBRUARY 28, 2019

PRESIDING OFFICER: Richard P. Flake, Houston

- 8:00 **LATE REGISTRATION** – Ballroom Foyer, The La Cantera Resort, 16641 La Cantera Pkwy., San Antonio, TX 78256, (210) 558-6500
- 8:00 **CONTINENTAL BREAKFAST** – Sponsored by Nelson Forensics, LLC
- 8:50 **WELCOME ON BEHALF OF THE CONSTRUCTION LAW FOUNDATION**
Matthew J. Sullivan, Austin
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.
Gregory M. Cokinos, Houston
- 10:00 **STANDARD, NOT OPTIONAL: THE STANDARD OF CARE AND DESIGN PROFESSIONALS UNDER TEXAS LAW** – The standard of care lies at the very heart of any claims involving architects, engineers, or other design professionals. Learn about the origins and applications of this principle, as well as perils for the unwary and cautionary tales when the standard has gone wrong.
Matthew C. Ryan, Austin
- 10:30 **BREAK** – Sponsored by The VERTEX Companies, Inc.
- 11:00 **MIND IF I PASS-THROUGH?** – Sometimes it makes sense for a general contractor to prosecute a subcontractor's claim against an owner. This presentation will discuss the validity of pass-through claims and scope/drafting considerations associated with liquidating agreements.
John C. Warren, Houston
- 11:30 **INSURANCE LAW UPDATE** – An update on recent insurance cases that impact the construction industry.
Lee H. Shidlofsky, Austin
- 12:00 **LUNCHEON** – *Discounted tickets available for \$16 each.* Sponsored by Interface Consulting International, Inc.

.50 Ethics
Topic: IN-HOUSE COUNSEL – GROUNDHOG DAY: MOVING PAST HACKNEYED CONTRACT NEGOTIATIONS
From damages, design responsibility, and unforeseen site conditions to antiquated retainage provisions, the "second verse, same as the first" stalemates continue in contract negotiations. In-house counsel discuss practical, reasonable compromises to make contract negotiations more efficient and equitable.

Sub Contractor: Kelly A. Carr, Carrollton
Design: R. Craig Williams, Dallas
Contractor: Matthew D. Beshara, Houston
Owner: Shae Moore, Irving

PRESIDING OFFICER: John "Alex" Huddleston, San Antonio

- 1:30 **TERMINATION!! WILL IT REALLY GET YOU WHAT YOU WANT? (MAYBE WE'D BETTER TALK FIRST)** – Issues with the termination process and considerations for both the upstream and downstream parties before the decision to terminate is made.
Timothy C. Ross, Houston
Allison J. Snyder, Houston

- 2:15 **WON'T YOU BE MY NEIGHBOR?** – A survey of issues for both contractors and owners to consider when dealing with adjacent property owners before and during construction of the project. Learn how to successfully address "good neighbor" issues such as tower crane licenses, tieback licenses, parking/staging agreements, construction easements, air rights and handling trespass claims.
Andrea A. Hight, Dallas

- 3:00 **BREAK** – Sponsored by The Rhodes Group

CONCURRENT SESSIONS - Choose Sessions A or B

Sessions A

- 3:30 **MECHANICS LIENS – OFF THE BEATEN PATH** – Removeables, Leasehold Liens, Fraudulent Liens, Bankruptcy Considerations, P3's, Liens Against Mineral Property, Constitutional Lien Issues, Specially Fabricated Materials Liens, Inception Issues and more.
Steven E. Kennedy, Dallas
- 4:15 **NEGOTIATING TRICKY CLAUSES IN PRIME CONTRACTS – THE SEQUEL** – This presentation revisits the 2014 conference topic providing the owner's and contractor's perspectives on some key prime contract provisions. Topics range from old favorites like no damage for delay clauses to more contemporary issues like price escalations from tariffs.
Robert C. Bass, Jr., Austin
John W. Slates, Dallas

Session B

- 3:30 **CONTRACTING IN THE AGE OF TRUMP: CHANGES AND REAFFIRMATIONS** – Not surprisingly the Trump administration has caused considerable turbulence in federal contracting. This will be a nonpartisan (really!) discussion of the good and bad aspects of what has been happening regarding regulations, Buy American Act, tariffs and other developments.
James F. Nagle, Seattle, WA
- 4:15 **REALLY? COMPLIANCE ISSUES ON STATE AND LOCAL CONSTRUCTION PROCUREMENTS: IMPACT OF FEDERAL AND TEXAS STATUTES** – A discussion of the various federal and state statutes which create unique compliance issues for a contractor on state and local construction procurements.
Timothy D. Matheny, Dallas

- 5:15 **RECEPTION** – Sponsored by Rimkus Consulting Group, Inc.

FRIDAY, MARCH 1, 2019

- 7:00 **CONTINENTAL BREAKFAST**
- 7:15 **BREAKFAST BREAKOUTS** – *Choose one of three sessions. Open to all registrants on a first-come, first-served basis until all seats are full.*

- Breakout #1*
A WALK ON THE WILD SIDE: RESIDENTIAL CONSTRUCTION ARBITRATION – The vast majority of residential disputes end up in arbitration. Residential arbitration, however, contains nuances not seen in commercial or industrial dispute resolution. From the demand to final hearing, we will focus on those nuances and provide tips and traps for the unwary.
Curt M. Covington, Rockwall

- Breakout #2*
TOP TEN EMPLOYMENT LAW DEVELOPMENTS CONSTRUCTION LAWYERS NEED TO KNOW – Learn about key changes in developing employment law. Topics addressed include the #MeToo movement, policy changes at the Department of Labor and OSHA as well as Texas non-competition and non-solicitation law, and anti-SLAPP protection.
Christie Newkirk, Dallas

- Breakout #3*
OLD DOGS TEACH THEIR TRICKS – "Experienced" practitioners pull back the curtain and impart sage advice on broad aspects of construction law and practice.
George Edward Bowles, Dallas
Richard P. Flake, Houston
Laird E. Lawrence, Dallas
William W. Sommers, San Antonio

PRESIDING OFFICER: Andrea A. Hight, Dallas

- 8:15 **LEGISLATIVE UPDATE** – Learn what to expect with the upcoming 86th Texas Legislative Session and how it will affect the construction industry.
William "Ben" Westcott, Houston
- 9:00 **JURY CHARGE IN A MULTI-PARTY CONSTRUCTION DEFECT CASE** – The Jury Charge is vital in any jury trial but it is more complicated in a multi-party construction defect case. This session will discuss the latest developments in charging the jury and the difficulties and obstacles you will face in handling multiple parties and responsible third parties.
E. Link Beck, El Paso
- 9:30 **COVERAGE KILLERS** – From "breach of contract" to "progressive damage" (and others in between) these are the insurance policy endorsements to look out for and avoid.
Douglas P. Skelley, Austin
- 10:00 **BREAK** – Sponsored by FTI Consulting, Inc.
- 10:30 **WHAT DO YOU MEAN WE HAVE TO ARBITRATE AND LITIGATE?** – Scenario: Multi-party design defects and delay case. The various contracts were not dovetailed, and Owner is in LITIGATION with the design team, while in ARBITRATION with the construction team. How do you conduct discovery and the hearing/trial? What, if any, collateral estoppel effect does the Final Award have in the litigation? Is the Final Award even admissible in the litigation? We will answer these and other intriguing questions.
Kathleen A. Barnes, McLean, VA
- 11:15 **E-DISCOVERY: CASE LAW UPDATE AND TRENDS** – The panel will address recent developments in Texas law on e-discovery with emphasis on rule changes and the 2017 Texas Supreme Court opinion in *In Re State Farm Lloyds*; challenges companies face with saving, organizing, searching, and retrieving electronically stored information (ESI) that may be subject to litigation; and the use of e-discovery vendors to assist with the production of ESI and development of search tools and techniques to aid with culling and reviewing ESI. The panel will also address lessons learned from experiences involving disputes over e-discovery from the perspectives of outside counsel, in-house counsel, and the bench.
Hon. Xavier Rodriguez, San Antonio
Jana Mills, Fort Worth
Gregory M. Weinstein, Dallas
- 12:00 **LUNCHEON** – *Tickets available for \$26 each.*
.50 Ethics
Topic: A LOOK BEHIND THE CURTAIN – You already know that the Lonergan case is contrary to the prevailing law of the land. But the entangled family and personal relationships between the parties and decision makers qualifies as nothing less than a soap opera. Drawing on new research and the recently discovered original trial file, enjoy an entertaining look "behind the curtain" of the state's most notorious construction case.
Misty H. Gutierrez, Dallas
Fred D. Wilshusen, Dallas
- PRESIDING OFFICER: Timothy C. Ross, Houston*
- 1:30 **TWO SIDES OF THE SAME COIN? – BREACH OF CONTRACT V. BREACH OF WARRANTY** – This presentation analyzes similarities and differences in breach of contract and warranty claims, including implied warranties in commercial construction, contractual warranties,

HOTEL INFORMATION

32nd ANNUAL CONSTRUCTION LAW CONFERENCE ♦ Feb. 28 & Mar. 1, 2019

The La Cantera Resort & Spa • 16641 La Cantera Parkway • San Antonio, TX 78256

A special block of rooms has been reserved at The La Cantera Resort & Spa at the special rate of \$235 for single/double. The hotel will release all unused rooms on the **CUTOFF DATE of FEBRUARY 4, 2019**. When contacting the hotel you must identify yourself as a participant with the "32nd Annual Construction Law Conference" (Group Code: TIB2719A) in order to obtain the special rate in our room block. **Please call the hotel reservation line at (210) 558-6500 to make your reservation.** A deposit equal to your first night's room and tax will be required. We recommend that you make your reservations immediately if you plan to attend this course. Once the room block is exhausted rooms will only be provided on a space and rate-available basis.

REGISTRATION FORM

Mail to: The Construction Law Foundation of Texas
32nd Annual Construction Law Conference
P.O. Box 4646
Austin, TX 78765-4646

Online at: www.constructionlawfoundation.org

Fax Form to: 512/451-2911 *(must be accompanied by American Express, Visa or Mastercard Information)*
or Phone: 512/451-6960

Please register me for the conference as follows:

- Regular Pre-Registration Fee (due by 5 p.m. February 8).....\$500.00
- Pre-Registration for Construction Law Section Members.....\$450.00
(due by 5 p.m. February 8)
- Registration *after 5 p.m. February 8 & before 5 p.m. February 22*.....\$ +50.00
- Registration *after 5 p.m. February 22* and at the door.....\$+100.00
- Construction Law Section Dues (eligible for the member registration fee)..... \$ 30.00

___ Thursday Luncheon Ticket *Discounted* at \$16 each..... \$ _____
___ Friday Luncheon Ticket at \$26 each..... \$ _____
___ # of "Helping A Hero" Raffle Tickets* (*\$10 each or 3 for \$25*) \$ _____

- RSVP for Texas Women's CLG Event on Wednesday, February 27, 2019.....Free
- I will play in the Golf Tournament on Wednesday, February 27, 2019**
Green Fee (includes range balls and shared cart).....\$155.00
My handicap is _____ . ☞ Required

Conference Materials: Choose ONE

Registrants may select either the electronic or printed version of the conference materials. Please make your selection below or you may purchase both versions for an additional fee.

- USB Version (includes hard copies of PowerPoint presentations for note-taking)
- Printed Version (3-Ring Binder)
- Both USB & Printed Version at \$50 + .0825 tax.....\$54.13

I cannot attend the conference. Please forward the following:

- Audio CDs & course materials (USB or Printed) at \$450 + .0825 tax.....\$487.13
- Course materials only (USB or Printed) at \$180 + .0825 tax.....\$194.85

TOTAL ENCLOSED.....\$ _____

No refunds after 5:00 p.m. Friday, February 22, 2019. Cancellation policy on back cover. (Call for Government and Student Discount Information)

Name _____

Firm _____

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Telephone _____ Fax _____

Bar Card # _____ E-mail _____

Make Check Payable to: The Construction Law Foundation of Texas

Please Charge: AMERICAN EXPRESS VISA MASTERCARD

Card No. _____ Exp. Date _____

Name on Card (Please Print) _____

Security Code: (3 digit code on MC/Visa, 4 digit code on AmEx): _____

Billing Address (including zip): _____

Authorized Signature _____

SEND THIS FORM TO TEXAS INSTITUTE OF C.I.E.

and the propriety of asserting warranty and contract causes of action in litigation.

Colbie Brazell Campbell, Dallas

2:15 **MAYBE I WILL, MAYBE I WON'T: SOLVING THE LIQUIDATED DAMAGES PUZZLE** – Enforceability of terms, methods of calculation, and how to bust them. Includes sample language and practical tips.

Bethany F. Beck, San Antonio

3:00 **BREAK** – Sponsored by Inventus

3:15 **RAFFLE**

3:30 **BETTERMENT & ECONOMIC WASTE** – A discussion of limitations on the recovery of damages in construction litigation including betterment and economic waste.

David P. Benjamin, San Antonio

4:00 **THIRD-PARTY PRACTICE: RISKS AND REWARDS OF RTPs vs. TPDs** – Is the RTP designation underutilized by defendants? What are some unseen benefits of contractor defendants using the RTP designation versus bringing in third-party defendants? Includes a brief update on recent RTP case law.

Tracy Lynn McCreight, Austin

4:30 **ADJOURN**

PRESIDENT, THE CONSTRUCTION LAW FOUNDATION OF TEXAS

Matthew J. Sullivan, DuBois Bryant & Campbell, LLP, Austin

PRESIDING OFFICERS

Richard P. Flake, Richard P. Flake, PLLC, Houston

Andrea A. Hight, Winstead PC, Dallas

John Alex Huddleston, Strasburger & Price, L.L.P., San Antonio

Timothy C. Ross, Andrews Myers, P.C., Houston

CONFERENCE FACULTY

<i>Kathleen A. Barnes Watt, Tieder, Hoffar & Fitzgerald, L.L.P., McLean, VA</i>	<i>Misty H. Gutierrez Thomas, Feldman & Wilshusen, L.L.P., Dallas</i>	<i>Matthew C. Ryan Allensworth & Porter, LLP, Austin</i>
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<i>Robert C. Bass, Jr. Winstead PC, Austin</i>	<i>Andrea A. Hight Winstead PC, Dallas</i>	<i>Lee H. Shidlofsky Shidlofsky Law Firm PLLC, Austin</i>
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<i>Bethany F. Beck The Gardner Law Firm, P.C., San Antonio</i>	<i>Stephen E. Kennedy McGuire, Craddock & Strother, P.C., Dallas</i>	<i>Douglas P. Skelley Shidlofsky Law Firm PLLC, Austin</i>
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<i>E. Link Beck Beck & Hall, P.C., El Paso</i>	<i>Laird E. Lawrence Lawrence Arbitration, Dallas</i>	<i>John W. Slates Slates Harwell, LLP, Dallas</i>
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<i>David P. Benjamin Benhamin, Vana, Martinez & Biggs, LLP, San Antonio</i>	<i>Timothy D. Matheny Peckar & Abramson, P.C., Dallas</i>	<i>Allison J. Snyder Porter Hedges LLP, Houston</i>
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<i>Matthew D. Beshara Strategic Construction, Ltd., Houston</i>	<i>Tracy Lynn McCreight Munsch Hardt Kopf & Harr, P.C., Austin</i>	<i>William W. Sommers Langley & Banack, Inc., San Antonio</i>
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<i>George E. Bowles Locke Lord LLP, Dallas</i>	<i>Jana Mills American Airlines, Fort Worth</i>	<i>John C. Warren Cokinos Young, Houston</i>
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<i>Colbie Brazell Campbell Slates Harwell, LLP, Dallas</i>	<i>Shae Moore Vistra Energy, Irving</i>	<i>Gregory M. Weinstein Weinstein Radcliff Pipkin LLP, Dallas</i>
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<i>Kelly A. Carr The Brandt Companies, LLC, Carrollton</i>	<i>James F. Nagle Oles Morrison Rinker & Baker LLP, Seattle</i>	<i>William B. Westcott Andrews Myers, P.C., Houston</i>
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<i>Gregory M. Cokinos Cokinos Young, Houston</i>	<i>Christie Newkirk Diamond McCarthy LLP, Dallas</i>	<i>R. Craig Williams HKS Architects, Inc., Dallas</i>
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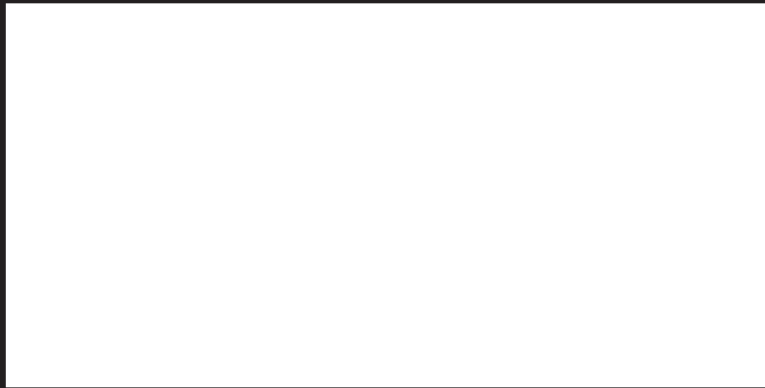
<i>Curt M. Covington Lamberth Ratcliffe Covington, PLLC, Rockwall</i>	<i>Hon. Xavier Rodriguez U.S. District Court, San Antonio</i>	<i>Fred D. Wilshusen Thomas, Feldman & Wilshusen, L.L.P., Dallas</i>
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<i>Richard P. Flake Richard P. Flake, PLLC, Houston</i>	<i>Timothy C. Ross Andrews Myers, P.C., Houston</i>	
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**32nd Annual
Construction Law Conference**
February 28 & March 1, 2019
**The La Cantera Resort & Spa
San Antonio, Texas**

Cover Art – “Cypress Creek in April” is an original by Julene Franki, former Director, TexasBarCLE and Executive Director, ALI-ABA. Julene has graciously donated an art piece for the Helping a Hero raffle. You can find more of her work at www.julene.io.

***Helping a Hero** — We are proud to partner with *Helping a Hero* to offer raffle tickets for your chance to win great prizes during the conference. All raffle proceeds benefit Helping a Hero and their mission to empower our severely wounded veterans returning from service by providing specially adapted homes to reintegrate them into their community.

Special Accommodations — If special arrangements are required for a person with a disability to attend this program, please contact us at 512/451-6960.

Section Website — Visit the Construction Law Section's website at www.constructionlawsection.org for information on how to join the Section and access past conference papers.

Pre-Registration — To ensure sufficient materials are available for all attendees, pre-registration is strongly encouraged. Late registration is subject to additional fees.

Online Registration — Visit www.constructionlawfoundation.org to register online using a Visa, MasterCard or American Express.

Registration by Telephone — You may register by telephone by calling 512/451-6960 or by fax 512/451-2911. Faxed and phone-in registrations require a Visa, MasterCard or American Express number, expiration date, security code and billing address.

Cancellations and Refunds — Refunds, less a \$50.00 processing fee, will be given to registrants who cancel by 5:00 p.m. on the Friday preceding the conference. No refunds will be granted thereafter. Course materials and audio CDs will automatically be mailed to prepaid registrants who did not receive a refund and were not able to attend.

2019 PLANNING COMMITTEE
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Timothy C. Ross, Houston

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John W. Slates, Dallas
Allison J. Snyder, Houston
William B. Westcott, Houston
Amy K. Wolfshohl, Houston

Past Section Chairs:
Michelle I. Rieger, Dallas
Matthew C. Ryan, Austin

This course has been approved for 14.25 hours credit (including 2.25 hours ethics) which will apply toward MCLE, the College of the State Bar of Texas and the Texas Board of Legal Specialization in the fields of Construction Law, Real Estate Law, Personal Injury Trial Law, Civil Appellate Law and Civil Trial Law. You must attend all sessions to receive full credit. MCLE credit is available in other states. Please let us know your needs when you register.

CPAs may obtain approximately 17.10 hours of CPE credit toward licensing with the Texas State Board of Public Accountancy. Sponsor No. 6867.

The Texas Institute of CLE is an accredited sponsor with the Texas Department of Insurance. An application has been submitted for 14.00 hours of General credit (all license types) and 2.0 hours ethics. This course is eligible for MCE credit through the Texas Real Estate Commission.

Annual Conference Sponsors also include:

- * **Flash Drives** – Sponsored by Spire Consulting Group, LLC
- * **Internet** – Sponsored by Exponent
- * **Name Badge Lanyards** – Sponsored by HSSK
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