

# 33RD ANNUAL CONSTRUCTION LAW CONFERENCE



MARCH 5 & 6, 2020  
THE LA CANTERA RESORT & SPA  
SAN ANTONIO, TEXAS

***Earn up to 13.00 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**



# 33RD ANNUAL CONSTRUCTION LAW CONFERENCE

March 5 & 6, 2020 ♦ The La Cantera Resort & Spa ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

## WEDNESDAY, MARCH 4, 2020

- 12:30 **GOLF TOURNAMENT** – *Shot Gun Start*  
The Palmer Course at The La Cantera Resort
- 2:00 **TEXAS WOMEN'S CONSTRUCTION LAW GROUP FORUM** – Plan on arriving at the hotel early to meet your fellow female construction lawyers for a special TWCLG networking event. *Details to be distributed separately.* – Sponsored by Veritas Advisory Group, Inc.
- 6:15 **RECEPTION** – In cooperation with the Young Lawyers Council of the Construction Law Section – Sponsored by Berkeley Research Group, LLC

## THURSDAY, MARCH 5, 2020

*PRESIDING OFFICER: Matthew J. Sullivan, Austin*

- 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**  
Fred D. Wilshusen, Dallas
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.  
Gregory M. Cokinos, Houston
- 10:00 **THE MILLER ACT: 85 YEARS OF FEDERAL PAYMENT BOND CLAIMS** – From the simple steps for filing a Miller Act bond claim to advanced traps, pitfalls and malpractice risks for the unfamiliar buried deep inside this 85 year old statute, the Miller Act continues to baffle many construction law practitioners. We will provide the who, when and how for filing a Miller Act claim as well as some of the many risks associated with the Act, and how to mitigate same.  
Brian K. Carroll, Temple
- 10:30 **BREAK** – Sponsored by The VERTEX Companies, Inc.
- 11:00 **WHOSE DESIGN IS IT ANYWAY? – A DISCUSSION REGARDING THE SKETCHY OBLIGATIONS OF DESIGN-ASSIST AND DESIGN DELEGATION** – Design-assist and design delegation have long been obligations present in construction contracts; but what do they mean? We will address the distinction between these two legally undefined concepts, the contractual framework which presents the concepts, and the issues that result therefrom.  
Kelly A. Carr, Carrollton  
William Stewart Shurtleff, Dallas

- 11:45 **SALES TAX FOR THE CONSTRUCTION INDUSTRY** – Proper handling of Texas sales and use tax obligations within the construction industry is crucial to preserving profit margins and avoiding audit headaches. This presentation addresses what's taxable in construction projects and how contract pricing dictates when and from whom Texas sales and use tax is due. We'll also cover common pitfalls that generate tax assessments and how you can reduce your audit risk through contract drafting.  
Danielle Ahlrich, Austin

- 12:15 **LUNCHEON** – *Discounted tickets available for \$16 each.* Sponsored by Interface Consulting International, Inc.
- REPORT FROM THE AFGHAN WAR ZONE**  
Colonel (Retired) John Siemietkowski will report on his two stints in Kabul for both the Army and as U.S. Deputy Justice Attachè. Focusing on rule of law and capacity building, topics will include polygraphing of Afghan prosecutors and investigators, building a new corruption court facility, navigating diplomatic waters and dodging the occasional missile attack!  
Col. John J. Siemietkowski, Washington, DC

*PRESIDING OFFICER: Brian K. Carroll, Temple*

- 1:45 **ROHR SHOCK: PROVING UP ATTORNEYS' FEES IN THE LODE STAR STATE** – The Texas Supreme Court recent decision in *Rohrmoos Venture* clarified the requirements for recovering attorneys' fees, and trial courts have taken notice. Don't get caught relying on the Arthur Anderson factors. Learn the most current case law and what attorneys must legally and ethically do to prove up their fees, including recommendations on billing practices, fee affidavits, and other considerations such as structuring fee agreements.  
Amy M. Emerson, Austin
- 2:45 **INSURANCE UPDATE** – An update on insurance coverage cases that every construction lawyer should know about. This 4D presentation will allow you to hear, touch and feel insurance coverage like never before.  
Lee H. Shidlofsky, Austin

**BREAK** – Sponsored by The Rhodes Group

### CONCURRENT SESSIONS - Choose Session A or B

- Session A**
- 3:45 **PROVING DELAY** – An exploration of the mysterious topic of proving and presenting delay and disruption related entitlement and damages issues. Mr. Baldwin will lay out the nuts and bolts of schedule analysis, disruption causes, and the damages associated with each. He will focus on what works and what does not. Mr. Peden will present an analysis of how these issues are presented and persuade a trier of fact, be it a jury, a judge or an arbitration panel. This will include the use of experts, demonstratives and the legal support for each.  
George C. Baldwin, Austin  
David D. Peden, Jr., Houston

- Session B**
- 3:45 **JUSTICE THAT HITS CLOSE TO HOME: TRYING A RESIDENTIAL CONSTRUCTION CASE AND WHAT YOU NEED TO KNOW** – Trying a residential case confronts the advocate with nuances not seen in commercial or industrial dispute resolution. From the discovery of a claim, to the demand, to final hearing/trial, this discussion will focus on those nuances and provide tips for the advocate from two veterans of the arena.  
Moderator: Richard P. Flake, Houston  
Mark S. McQuality, Dallas  
Curt M. Covington, Rockwall

5:15 **ADJOURN TO RECEPTION**

## FRIDAY, MARCH 6, 2020

*PRESIDING OFFICER: Amy K. Wolfshohl, Houston*

- 7:30 **CONTINENTAL BREAKFAST** – Sponsored by Rimkus Consulting Group, Inc.
- 8:00 **LEGISLATIVE UPDATE** – A review of the construction related bills passed by the 86th Texas Legislature.  
Sean M. McChristian, Houston
- 8:30 **ODDITIES IN ANTI-INDEMNITY STATUTE** – The Anti-Indemnity statute was intended to simplify indemnification between parties to a construction contract. Why is it still so complicated? What oddities have arisen in applying this statute to indemnity and insurance and what can be done to navigate this quagmire?  
Richard A. Capshaw, Dallas  
Kimberly Ann Davison, Dallas  
G. Stewart Whitehead, Austin  
Patrick J. Wielinski, Irving
- 9:30 **NOW YOU SEE IT, NOW YOU DON'T!** – This discussion will focus on drafting of general liability insurance requirements and how to protect your client (and yourself) from the aggressive tactics of many insurance companies.

The top five manuscripted GL exclusions will be examined.

Charles E. Comiskey, Houston

- 10:00 **BREAK** – Sponsored by FTI Consulting, Inc.
- 10:30 **IF WE HAD ONLY KNOWN THEN...** – We have all been there... those little (and big) construction issues that come up in our cases and transactions. Wouldn't it be great to just "run it past someone" who has been down this road before? Listen in as several seasoned construction lawyers tackle construction law topics of the day. Learn what worked for them in the past, what didn't, and some things to consider along the way.  
Moderator: Michelle I. Rieger, Dallas  
William K. Andrews, Houston  
W. Kyle Gooch, Dallas  
Steven D. Nelson, Dallas
- 11:15 **CONTINGENT PAYMENT ENFORCEABILITY/ "WHAT THE HECK"** – An overview of what the statute means from each perspective, how clauses are likely to be interpreted and what case law is out there, how GCs see the statute/typical contract language working, how subs see the statute/typical contract language working, how fault affects enforceability, and the use of the unconscionability exception in the statute.  
Andrew S. Harris, Austin  
Thomas J. Walthall, San Antonio

11:45 **RAFFLE**

- 12:00 **LUNCHEON BREAKOUTS** – *Tickets available for \$26 each. Choose one of three sessions. Open to all registrants on a first-come, first-served basis until seats are full. Meals for ticket holders only.*

- Option #1** **MAKING THE GRADE IN SCHOOL DISTRICT DEFECT LITIGATION – UNDERSTANDING THE ABC'S OF SUING ON BEHALF OF A SCHOOL DISTRICT OR PROSECUTING OR DEFENDING A CLAIM AGAINST A SCHOOL DISTRICT** – A discussion of (1) recent legislation addressing school district prerequisites to filing construction defect lawsuits and the requirements for school district's use of construction defect lawsuit proceeds and (2) issues faced by school districts, general contractors, and subcontractors during the course of a school district lawsuit and how to avoid common pitfalls in these suits.  
Patrick E. "Gene" Blanton, Dallas

- Option #2** **REPRESENTATIVE SAMPLING IN DESTRUCTIVE TESTING: A PLAINTIFF'S PERSPECTIVE** – Considerations for determining the scope, depth and locations for destructive testing that is statistically, legally and economically sound for multi-unit residential construction defect cases.  
Cass McKenzie, Houston

- Option #3** **THE GIFT AND THE CURSE: AN OVERVIEW OF RETAINAGE** – An overview of statutory and contractual retainage for both private and public projects that are governed by state and federal statutes. A discussion of retainage issues commonly faced by general contractors and subcontractors.  
Kenneth E. Stephens, Jr., Houston

*PRESIDING OFFICER: John W. Slates, Dallas*

- 1:30 **WHAT'S IN YOUR ASSIGNMENT?** – This presentation will cover often overlooked, but critically important if they are ever invoked, consents to the collateral assignment of contracts required by construction lenders from contractors and architects. Typically, these agreements go far beyond mere "consents" and present traps for the unwary. The discussion will also identify risks commonly encountered in other forms of contract assignments and suggest strategies to mitigate those risks.  
Jeffrey A. Ford, Dallas

# HOTEL INFORMATION

**33rd ANNUAL CONSTRUCTION LAW CONFERENCE ♦ March 5 & 6, 2020**  
*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. Once the room block is exhausted rooms will only be provided on a space and rate-available basis. The hotel will release any unused rooms on the **CUTOFF DATE of FEBRUARY 7, 2020**. When contacting the hotel you must identify yourself as a participant with the "33rd Annual Construction Law Conference" (Group Code: TIC20A) 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.

# REGISTRATION FORM

**Mail to:** The Construction Law Foundation of Texas  
 33rd Annual Construction Law Conference  
 P.O. Box 4646  
 Austin, TX 78765-4646

**Online at:** [www.constructionlawfoundation.org](http://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 14).....\$500.00
- Pre-Registration for Construction Law Section Members.....\$450.00  
 (due by 5 p.m. February 14)
- Registration *after 5 p.m. February 14 & before 5 p.m. February 28*...\$ +50.00
- Registration *after 5 p.m. February 28* 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 "Construction Educ. Foundation" Raffle Tickets\* (*\$10 each or 3 for \$25*) \$ \_\_\_\_\_

- I will play in the Golf Tournament on Wednesday, March 4, 2020**  
 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 28, 2020. Cancellation policy on back cover. (Call for Government and Student Discount Information)**

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Billing Address (incl. zip): \_\_\_\_\_

Authorized Signature \_\_\_\_\_

**SEND THIS FORM TO THE CONSTRUCTION LAW FOUNDATION OF TEXAS.**

2:15 **WHO IS BANKROLLING THIS PROJECT?** – The nature and character of private project financing has implications and ramifications to the Contractor. This discussion will explore how a Contractor can peek behind the curtain of the Owner's financing and how a Contractor can anticipate and manage the associated risks.  
 Scott Griffith, Dallas

3:00 **BREAK**

3:15 **CHANGE IS THE LAW OF CONSTRUCTION PROJECTS: LOOKING AT THE PAST AND PRESENT AS WE PLAN FOR THE FUTURE** – A practical guide for change order administration on major construction projects, including drafting tips and case studies of several change order disputes.  
 Tracy Galimore, Houston

3:45 **WINNERS AND LOSERS IN THE BATTLE OF SUPPLIER AND SUBCONTRACTOR'S FORMS** – A discussion of the applicability of UCC provisions when determining conflicting contract provisions; drafting credit applications so their terms survive if subsequent construction subcontracts are entered into that contain different or additional terms; and issues arising in litigation related to personal guarantees and their enforceability.  
 Misti L. Beanland, Dallas

4:15 **ADJOURN**

**PRESIDENT, THE CONSTRUCTION LAW FOUNDATION OF TEXAS**

*Fred D. Wilshusen, Thomas, Feldman & Wilshusen, L.L.P., Dallas*

**PRESIDING OFFICERS**

*Brian K. Carroll, Sanderford & Carroll P.C., Temple*

*John W. Slates, Slates Harwell, LLP, Dallas*

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

*Amy K. Wolfshohl, Porter Hedges LLP, Houston*

**CONFERENCE FACULTY**

- |  |  |   |
|--|--|---|
| <i>Danielle Ahlrich</i>  | <i>Kimberly Ann Davison</i>  | <i>Steven D. Nelson</i>                           |
| <i>Martens, Todd, Leonard &amp; Ahlrich, Austin</i>                        | <i>Griffith Davison &amp; Shurtleff, P.C., Dallas</i>                            | <i>Markel Surety, Plano</i>                       |
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| <i>George C. Baldwin</i>   | <i>Richard P. Flake</i>  | <i>Michelle I. Rieger</i>                         |
| <i>Peckar &amp; Abramson, P.C., Austin</i>                                 | <i>Richard P. Flake, PLLC, Houston</i>   | <i>Winstead PC, Dallas</i>                        |
| <i>Misti L. Beanland</i>   | <i>Jeffrey A. Ford</i>   | <i>Lee H. Shidlofsky</i>                          |
| <i>Matthews, Shiels, Knott, Eden, Davis &amp; Beanland, L.L.P., Dallas</i> | <i>Peckar &amp; Abramson, P.C., Dallas</i>                                       | <i>Shidlofsky Law Firm PLLC, Austin</i>           |
| <i>Patrick E. "Gene" Blanton</i>   | <i>Tracy Galimore</i>  | <i>William Stewart Shurtleff</i>                  |
| <i>Slates Harwell, LLP, Dallas</i>   | <i>Chevron, Houston</i>  | <i>Peckar &amp; Abramson, P.C., Dallas</i>        |
| <i>Richard A. Capshaw</i>  | <i>W. Kyle Gooch</i>   | <i>John J. Siemietkowski</i>                      |
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| <i>Kelly A. Carr</i>   | <i>Scott Griffith</i>  | <i>Kenneth E. Stephens, Jr.</i>                   |
| <i>The Brandt Companies, LLC, Carrollton</i>                               | <i>Griffith Davison &amp; Shurtleff, P.C., Dallas</i>                            | <i>Stephens, PLLC, Houston</i>                    |
| <i>Brian K. Carroll</i>  | <i>Andrew S. Harris</i>  | <i>Thomas J. Walthall, Jr.</i>                    |
| <i>Sanderford &amp; Carroll P.C., Temple</i>                               | <i>Andrews Myers, P.C., Austin</i>   | <i>The Gardner Law Firm, P.C., San Antonio</i>    |
| <i>Gregory M. Cokinos</i>  | <i>Sean M. McChristian</i>   | <i>G. Stewart Whitehead</i>                       |
| <i>Cokinos   Young, Houston</i>  | <i>Porter Hedges LLP, Houston</i>  | <i>Winstead PC, Austin</i>                        |
| <i>Charles E. Comiskey</i>   | <i>Cass McKenzie</i>   | <i>Patrick J. Wielinski</i>                       |
| <i>RiskTech, Inc., Houston</i>   | <i>McKenzie Rhody, LLP, Houston</i>  | <i>Cokinos   Young, Irving</i>                    |
| <i>Curt M. Covington</i>   | <i>Mark S. McQuality</i>   |   |
| <i>Lamberth Ratcliffe</i>  | <i>Shackelford, Melton, McKinley &amp; Norton, LLP, Dallas</i>                   |   |
| <i>Covington, PLLC, Rockwall</i>   |  |   |

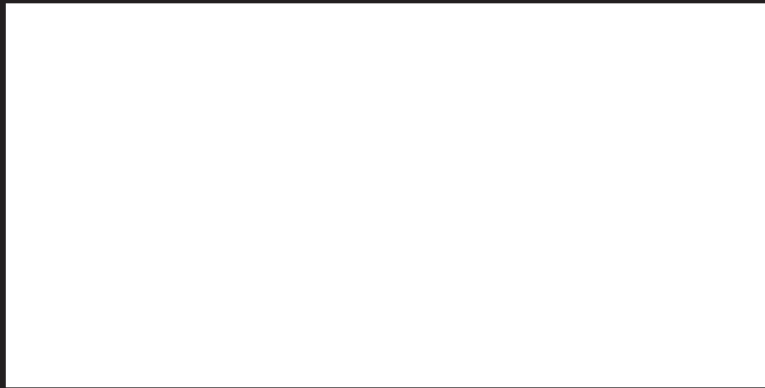
*Curt M. Covington*  
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**33rd Annual  
Construction Law Conference**  
**March 5 & 6, 2020**  
**The La Cantera Resort & Spa  
San Antonio, Texas**

**Cover Art** – “Dripping Springs Waterfall” is an original by Julene Franki, former Director, TexasBarCLE and Executive Director, ALI-ABA. You can find more of her work at [www.julene.io](http://www.julene.io).

**\*Construction Education Foundation (CEF)** — We are proud to partner with CEF to offer raffle tickets for your chance to win great prizes during the conference. All raffle proceeds benefit CEF and their mission to provide the construction industry the most qualified, technically trained people at all levels. Their target is construction excellence.

**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](http://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](http://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.

**2020 PLANNING COMMITTEE  
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*Past Section Chair:*  
George E. Bowles, Dallas

This course has been approved for 13.00 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 15.60 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 13.00 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:**

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