

35TH ANNUAL CONSTRUCTION LAW CONFERENCE



**MARCH 3 & 4, 2022
THE LA CANTERA RESORT & SPA
SAN ANTONIO, TEXAS**

Earn up to 12.50 Hours MCLE Credit, including 4.0 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 MCE credit through the Texas Real Estate Commission. Texas Department of Insurance credit requested.

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

35TH ANNUAL CONSTRUCTION LAW CONFERENCE

March 3 & 4, 2022 ♦ The La Cantera Resort & Spa ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, MARCH 2, 2022

- 12:30 **GOLF TOURNAMENT** – *Shot Gun Start*
The Resort Course at The La Cantera Resort
- 4:00 **TEXAS WOMEN'S CONSTRUCTION LAW GROUP NETWORKING & SPA EVENT** – Spa services between 1:45–4:00pm to be arranged in advance directly with the Loma De Vida Spa at La Cantera. Spaces are limited. Networking on the Quench spa patio between 4–5pm for registered conference attendees only. *Please indicate your RSVP for the networking on the registration form.* – Sponsored by Veritas Advisory Group, Inc. – A Socotec Company
- 6:15 **RECEPTION** – In cooperation with the Construction Law Section Young Lawyers Committee – Sponsored by Berkeley Research Group, LLC

THURSDAY, MARCH 3, 2022

PRESIDING OFFICER: Laird E. Lawrence, Dallas

- 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 Walter P. Moore Technology, LLC
- 8:50 **WELCOME ON BEHALF OF THE CONSTRUCTION LAW FOUNDATION**
Stephanie L. O'Rourke, San Antonio
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.
Gregory M. Cokinos, Houston
- 10:00 **DING-DONG THE LONERGAN WITCH IS DEAD: SB 219'S IMPACT AND HOW TO LIVE IN THE NEW WORLD** – After 114 years and much controversy, the *Loneragan* case was replaced when the 2021 Legislature passed SB 219. This presentation will focus on the implications of the new law and how to navigate its many provisions.
Matthew C. Ryan, Austin
Fred D. Wilshusen, Dallas
- 10:30 **BREAK** – Sponsored by American Construction Investigations, Ltd.
- 11:00 **LET THE END TIMES ROLL: PROACTIVELY MANAGING PROJECT CLOSEOUT** – In the final stages of construction, project closeout often becomes the focus. Successful project closeout may be complicated with even the hint of a dispute, whether related to the flow of payment, delayed completion, quality of work, or otherwise. The process can be effectively managed on the front end during the contract-drafting stage, paving the way for the parties to navigate this challenging time despite an existing or brewing dispute.
S.W. "Whitney" Knight, Austin
- 11:30 **YOU GET WHAT YOU GET AND YOU DON'T THROW A FIT: ENFORCEMENT OF THE "AS IS" CLAUSE IN TEXAS** – The client closes on the purchase of an existing structure pursuant to a contract containing an "as is" clause and, upon ownership, discovers defects that will cost tens (or hundreds) of thousands of dollars to remedy. Under Texas law, is the client stuck with the repair bill, or is it worth throwing a fit? An overview of the enforceability of the "as is" clause in both residential and commercial real-estate transactions.
Jacob D. Thomas, McKinney
- 12:00 **LUNCHEON** – *Tickets available for \$25 each.*
LESSONS LEARNED – Back by popular demand, a panel of four very experienced construction lawyers will discuss their thoughts on current issues and lessons they have learned over their careers - sometimes the hard way - negotiating construction contracts and handling disputes including mediation, arbitration and litigation.
Moderator: Richard P. Flake, Houston
Jeffrey A. Ford, Dallas
Allison J. Snyder, Houston
William W. Sommers, San Antonio

PRESIDING OFFICER: Steven Doyle, Richardson

- 1:30 **MAKING THE BEST OF WHAT'S LEFT – LIEN PRIORITY DISPUTES** – The panel will discuss lien priority disputes where reserved and trapped funds are insufficient to pay all claims from a Mediator, Owner and Subcontractor/Supplier's perspectives. Issues include how to calculate the pie, who has priority, and how deadlines play into priority. We will also include practical advice regarding resolution of these claims when summary judgment seems unlikely.
Moderator: Brian Keith Carroll, Temple
Misti L. Beanland, Dallas
Amy K. Wolfshohl, Houston
- 2:15 **WHAT HAPPENED TO CHAPTER 53?** – After years of proposals for a rewriting of the Texas Mechanic's Lien statute, House Bill 2237 was passed in 2021 – described as a more modest attempt to streamline and simplify the statute. This session focuses on those changes that will affect lien claims and rights: what changed and what stayed the same.
Gregory Alan Harwell, Dallas
- 2:45 **PROCEDURE, PITFALLS, PRACTICE POINTERS** – The 4 Ps of Corporate Representative Depositions. This presentation will focus on some important considerations when presenting the voice of the corporation, including practice pointers relevant in construction disputes.
C. Mauricio Escobar, Houston
- 3:15 **BREAK** – Sponsored by FTI Consulting, Inc.

CONCURRENT SESSIONS - Choose Sessions A or B

Sessions A

- 3:45 **WHAT ARE YOU IMPLYING?** – There are only a handful of essential components to a contract, but a host of other rights and obligations that the parties may want to have addressed. In the absence of certain terms, the law may imply various obligations on the parties – some perhaps desirable, some not. This session will cover what implied obligations, duties, and terms may be in your contract that you did not expressly include, and how they may be avoided.
Sara Abbott McEown, Houston
- 4:30 **FREEDOM OF CONTRACT – EXCEPT WHEN IT'S NOT BY STATUTE** – This session will explore the statutory exceptions to Texas's strong public policy favoring freedom of contract and examine what causes the legislature to intervene with prohibitions on certain types of promises in construction contracts.
D. Lance Currie, Dallas

Sessions B

- 3:45 **TOP EMPLOYMENT LAW COMPLIANCE ISSUES OF 2022** – A discussion of the latest developments in employment law and best practices for compliance, including anti-harassment laws, post-COVID return to work issues, worker classification, non-competes, OSHA enforcement, DE&I initiatives and labor organization.
Anthony G. "Tony" Stergio, Houston
- 4:30 **DIVORCE IN THE MARRIAGE OF CONVENIENCE (OTHERWISE KNOWN AS THE JOINT VENTURE)** – Joint ventures have become an attractive structure to allow contractors and engineers to combine resources and know-how to tackle some of the biggest projects. Legal issues can arise during and after a project that may leave the joint venture members at odds with their client, subcontractors and each other. This session will explore the legal issues that members face, various responsibilities they have to each other (including potential fiduciary duties), how the breakdown of the relationship may affect litigation with third parties and between joint venturers, as well as ethical issues that should be considered when representing a joint venture.
Ian P. Faria, Houston

- 5:15 **ADJOURN TO RECEPTION** – Sponsored by Interface Consulting International, Inc. & Nelson Forensics, LLC

FRIDAY, MARCH 4, 2022

PRESIDING OFFICER: Bethany F. Beck, San Antonio

- 8:00 **CONTINENTAL BREAKFAST** – Sponsored by Fiebig Architecture, PLLC
- 8:30 **LEGISLATIVE UPDATE** – What's new from the 87th Legislative Session that impacts the construction industry and your practice?
Cathy L. Altman, Dallas
- 9:00 **VOIR DIRE: FOLLOWING THE YELLOW BRICK ROAD TO THE LAND OF OZ (A FAIR JURY TRIAL)** – A frank discussion of the plaintiff versus defendant perspectives in arriving at a fair panel. We will discuss the lions, and tigers, and bears along the yellow brick road to justice.
Lamont A. Jefferson, San Antonio
Fidel Rodriguez Jr, San Antonio
- 9:45 **BREAK** – Sponsored by Bryant Consultants, Inc.
- 10:15 **INSURANCE LAW UPDATE** – A scintillating "live" presentation about all the non-COVID developments in insurance coverage as it relates to the construction industry. Prepare to be astounded and amazed.
Lee H. Shidlofsky, Austin
- 10:45 **HOT TOPICS IN JURY CHARGES FOR CONSTRUCTION CASES** – Examine recent jury charge cases and special challenges for preparing and arguing the jury charge in construction cases.
Dana Livingston, Austin

11:30 **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

GOVERNMENT CONTRACTING ISSUES – ALTERNATIVE PROCUREMENT OF PUBLIC PROJECTS, ARE WE GETTING WHAT WE PAID FOR? – The Trinity River Authority's seasoned general counsel will offer insights on public contracting in Texas, with practical advice for both government and private practice lawyers.
Howard S. Slobodin, Fort Worth

Option #2

DIGGING INTO THE DEFENSES OF A SUBCONTRACTOR – Case law update concerning defenses available to Subcontractors in Construction Defect Claims and recent outcomes applying defenses, including indemnity and additional insured tenders.
Melissa Osio Martinez, McAllen

Option #3

CYBER SECURITY FOR THE CONSTRUCTION LAWYER – An overview of common cybersecurity issues that construction lawyers may encounter representing their clients. Plus, a discussion about the ethical duties owed to clients by lawyers to secure client data and to alert clients about data breaches.
Jon Paul Hoelscher, Houston

PRESIDING OFFICER: R. Carson Fisk, Austin

1:00 RAFFLE

- 1:30 **DAMAGES IN CONSTRUCTION: A PRIMER – COST TO RESTORE OR BUILD IT BETTER?** – Betterment is a philosophically complicated subject invoked in virtually every design and construction defect litigation, but has limited backup in case law. This section desperately needs a thoughtful, comprehensive definition or understanding of what betterment is or is not, a review of the sparse case law supporting betterment in Texas and other jurisdictions.
Hollye C. Fisk, Dallas
Michelle I. Rieger, Dallas
Bret A. Sanders, Austin

2:15 **PERSONAL SURETY DEFENSES & THE ETHICAL TIGHT ROPE OF JOINT REPRESENTATION** – While surety bonds are often viewed as security mechanisms on construction projects, claims on a bond sometimes give rise to personal surety defenses unavailable to its principal. This session will discuss common (and not so common) separate surety defenses along with ethical considerations a lawyer should consider when handling claims under joint representation.

Robert M. Fitzgerald, Van

2:45 **BREAK** – Sponsored by Lighthouse Consulting Group

3:00 **BUILDING YOUR CASE ON A SOLID FOUNDATION TO WITHSTAND APPEAL: RESERVING ERROR FOR APPEAL IN CONSTRUCTION CASES** – Getting through trial is only part of the legal fight, as the appellate courts have a critical role to play in affirming or reversing a judgment. But an appeal is destined to go nowhere unless there was error on which the appeal can be based. This session will focus on error-preservation tips and traps for the construction litigator.

Katherine Elrich, Dallas

3:30 **LITIGATING FOR THE LONG HAUL: TIPS FOR LITIGATING A MEDIUM-SIZED CASE EFFICIENTLY** – To litigate a case efficiently, perspective is key. You should view every part of your case through the lens of whether it will help your client resolve a dispute. This presentation will focus on ways to help a client resolve—rather than escalate—a dispute.

Allen V. Wilson, San Antonio

4:00 **ADJOURN**

PRESIDENT, THE CONSTRUCTION LAW FOUNDATION OF TEXAS

Stephanie L. O'Rourke, Cokinos | Young, San Antonio

PRESIDING OFFICERS

Bethany F. Beck, Sanderford & Carroll P.C., San Antonio

Steven Doyle, Hill & Wilkinson General Contractors, Richardson

R. Carson Fisk, Andrews Myers, P.C., Austin

Laird E. Lawrence, Lawrence Arbitration, Dallas

CONFERENCE FACULTY

Cathy L. Altman, Carrington, Coleman, Sloman & Blumenthal, L.L.P., Dallas

Misti L. Beanland, Matthews, Shiels, Knott, Eden, Davis & Beanland, L.L.P., Dallas

Brian Keith Carroll, Sanderford & Carroll P.C., Temple

Gregory M. Cokinos, Cokinos | Young, Houston

D. Lance Currie, Carrington, Coleman, Sloman & Blumenthal, LLP, Dallas

Katherine Elrich, Cobb Martinez Woodward, PLLC, Dallas

C. Mauricio Escobar, Kilpatrick Townsend & Stockton LLP, Houston

Ian P. Faria, Bradley Arant Boulton Cummings LLP, Houston

Hollye C. Fisk, Fisk Attorneys, P.C., Dallas

Robert M. Fitzgerald, Law Offices of Robert M. Fitzgerald, Van

Richard P. Flake, Flake ADR, Houston

Jeffrey A. Ford, Peckar & Abramson, P.C., Dallas

Gregory Alan Harwell, Slates Harwell, LLP, Dallas

Jon Paul Hoelscher, Bradley Arant Boulton Cummings LLP, Houston

Lamont A. Jefferson, Jefferson Cano Allison Barkley, PLLC, San Antonio

S.W. "Whitney" Knight, Allensworth Law, Austin

Dana Livingston, Cokinos | Young, West Lake Hills

Melissa Osio Martinez, Gault, Nye & Quintana, L.L.P., McAllen

Sara Abbott McEown, Andrews Myers, P.C., Houston

Michelle I. Rieger, Winstead PC, Dallas

Fidel Rodriguez, Jr., Rodriguez Trial Law, San Antonio

Matthew C. Ryan, Allensworth Law, Austin

Bret A. Sanders, Fee, Smith, Sharp & Vitullo LLP, Austin

Lee H. Shidlofsky, Shidlofsky Law Firm PLLC, Austin

Howard S. Slobodin, Trinity River Authority of Texas, Arlington

Allison J. Snyder, Porter Hedges LLP, Houston

William W. Sommers, Langley & Banack, Inc., San Antonio

Anthony G. "Tony" Stergio, Andrews Myers, P.C., Houston

Jacob D. Thomas, Saunders, Walsh & Beard, McKinney

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

Allen V. Wilson, Sanderford & Carroll P.C., San Antonio

Amy K. Wolfschuhl, Porter Hedges LLP, Houston

HOTEL INFORMATION

35th ANNUAL CONSTRUCTION LAW CONFERENCE ♦ March 3 & 4, 2022

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 JANUARY 30, 2022**. When contacting the hotel you must identify yourself as a participant with the "35th Annual Construction Law Conference" (Group Code: ACC0122A) 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
35th 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
or Phone: 512/451-6960 Express, Visa or MasterCard Information)

Please register me for the conference as follows:

- ☐ Regular Pre-Registration Fee (due by 5 p.m. February 11).....\$500.00
- ☐ Pre-Registration for Construction Law Section Members.....\$450.00
(due by 5 p.m. February 11)
- ☐ Registration *after 5 p.m. February 11 & before 5 p.m. February 25*.....\$ +50.00
- ☐ Registration *after 5 p.m. February 25* and at the door.....\$ +100.00
- ☐ Construction Law Section Dues (eligible for the member registration fee).....\$ 30.00
- ___ Thursday Luncheon Ticket at \$25 each.....\$ _____
- ___ Friday Luncheon Ticket at \$26 each.....\$ _____
- ___ # of "Folds of Honor" Raffle Tickets* (\$10 each *or* 3 for \$25).....\$ _____

☐ RSVP for Texas Women's CLG Networking Event on Wednesday, March 2, 2022

☐ **I will play in the Golf Tournament on Wednesday, March 2, 2022**
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 25, 2022. Cancellation policy on back cover.
(Call for Government and Student Discount Information)

Name _____

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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 (incl. zip): _____

Authorized Signature _____

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The La Cantera Resort & Spa
San Antonio, Texas

Cover Art – “Bluebonnet Trail” 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.

***Folds of Honor Foundation (FOH)** — We are proud to once again partner with Folds of Honor to offer raffle tickets for your chance to win great prizes during the conference. All raffle proceeds benefit FOH and their mission to provide scholarship assistance to the spouses and children of soldiers killed or wounded in service to our country.

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 materials.

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.

2022 PLANNING COMMITTEE
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John C. Warren, Houston

This course has been approved for 12.50 hours credit (including 4.0 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 15.00 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 12.50 hours of General credit (all license types) and 3.0 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 Rimkus Consulting Group, Inc.
- * **Name Badge Lanyards** – Sponsored by Weaver
- * **Notepads** – Sponsored by Thornton Tomasetti
- * **Power Strips** – Sponsored by Precision Scheduling Consultants, LLC
- * **Tote Bags** – Sponsored by Synergen - A Socotec Company
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