



American Bar Association
Forum on the Construction Industry

2012 Annual Meeting

ADVANCED PROJECT DELIVERY:

Improving the Odds of Success



April 26 – 28, 2012

Bellagio Hotel • Las Vegas, NV

SERVING THE CONSTRUCTION INDUSTRY THROUGH EDUCATION,
LEADERSHIP, AND FELLOWSHIP OF CONSTRUCTION LAWYERS

ABA
Defending Liberty
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Dear Colleagues

The Forum's 2012 Annual Meeting takes us back to the exciting and glamorous city of Las Vegas after a hiatus of 13 years. In addition to the fun and excitement that Las Vegas always provides, this years' program will focus on the ever changing use of Project Delivery Systems on construction projects large and small. Whether your construction project practice is transactional or focuses on litigation, you will obtain much useful information, presented by outstanding speakers who are leaders in their fields.

Our program entitled “Advanced Project Delivery—Improving the Odds of Success” takes an advanced look at project delivery systems. Are they providing all of the benefits we expected? Does the selection of a project delivery system have a significant impact on the success of a project? Are certain project delivery systems better for certain types of projects? Where are we headed with project delivery systems in the future? Do these systems deliver projects on time, on budget and with fewer disputes? Plenary sessions and many workshops will focus on the particular nuances of specific project delivery systems, the roles and responsibilities of the parties, and other matters. This promises to be a very exciting program.

In addition to the program, we have Las Vegas. It is a unique venue which offers so much to see and do for everyone. The program schedule will allow time for attendees, families and guests to experience all that is Las Vegas. Whether you elect to take in a show, gamble, play golf or simply people watch, Las Vegas and the exciting Bellagio Hotel, where we will be located, offers opportunities galore to do so. We have also built in time for Division activities, a women attendees networking breakfast, a diversity reception, the annual Young Lawyers service project and a golf tournament.

Join us in this very unique location for a wonderful program, where you can interact with your colleagues, obtain advanced construction CLE and enjoy all that our venue provides.

Welcome to Las Vegas and the Forum's 2012 Annual Meeting!

William E. Franczek, Esq.

PROGRAM CO-CHAIR

Vandeventer Black, LLP

Norfolk, VA

Thomas L. Rosenberg, Esq.

PROGRAM CO-CHAIR

Roetzel & Andress LPA

Columbus, OH

Kerry L. Kester, Esq.

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Carpenter/PH, LLP, Hartford, CT*

John S. Vento

Trenam Kemker et al, Tampa, FL



Program Schedule

WEDNESDAY, April 25, 2012

10:00 am – 5:00 pm
ADVANCED REGISTRATION
/INFORMATION

3:00 – 5:00 pm
EXHIBITOR SET-UP
ONSITE REGISTRATION

THURSDAY, April 26, 2012

7:00 am – 5:30 pm
REGISTRATION/EXHIBITS OPEN

7:00 am – 8:30 am
ORIENTATION BREAKFAST

7:00 am – 8:30 am
WOMEN ATTENDEES
NET WORKING BREAKFAST

7:30 am – 8:30 am
CONTINENTAL BREAKFAST

8:30 am – 8:45 am
WELCOME FROM THE CHAIR
OPENING REMARKS AND
ANNOUNCEMENTS

8:45 am – 10:00 am
PLENARY 1

**DOES IT REALLY MATTER? WHAT
DOES THE PROJECT DELIVERY
SYSTEM BRING TO THE SUCCESS
OR FAILURE OF THE PROJECT?**

Can the Project Delivery System (“PDS”) have an effect on the success or failure of a project on minimizing disputes and on the means and manner in which litigation or arbitration proceeds? How can we measure the success or failure of a PDS? What lessons can we learn from projects gone bad and well based on the PDS selected?

SPEAKERS:

Ross J. Altman
DLA Piper, Chicago, IL

Jeffrey R. Appelbaum
Thompson Hine LLP, Cleveland, OH

Jeffrey G. Gilmore
Akerman Senterfitt, Vienna, VA

10:00 am – 10:15 am
BREAK

10:15 am – 11:15 am
PLENARY 2

**YOU’VE GOT A FRIEND, OR DO
YOU? HOW DO THE DELIVERY
SYSTEMS AND PARTY POSTURES
IMPACT LITIGATION STRATEGY
AND PROCEDURES IN MULTI-
PARTY CONSTRUCTION CLAIMS?**

How does the delivery system used impact litigation activities, strategy and procedures? How do the alliances among the parties shift once we are in litigation? How do the shifting alliances affect pleading and proof? For example, in CMAR, the CM could be aligned with the Owner against the trades. In Design-Build, the architect is adverse to the Owner. What about other systems? Can the adversary change through the use of tolling agreements, third-party agreements and empty chairs?

SPEAKERS:

John E. Bulman
*Little Medeiros Kinder Bulman & Whitney PC,
Providence, RI*

Joel D. Heusinger
Woods & Aitken LLP, Denver, CO

Allison J. Snyder
Porter Hedges LLP, Houston, TX

11:15 am – 11:30 am
BREAK

11:30 am – 12:30 pm
WORKSHOP A

**THE RUMBLE IN THE JUNGLE –
LETTERS OF CREDIT VS.
BONDING.**

Securing performance risk in alternative delivery projects: A consideration of letters of credit, bonding and insurance options for traditional and non-traditional delivery systems. What are the challenges for bonding companies in the Design-Build and CM world, and what are the challenges of bonding the LEAN construction agreements, alliancing arrangements, and 3-party collaborative agreements? How are they different from the DBB project? Are bonding companies getting caught up in claims for design defects? Has that affected bonding rates? How are LOC’s being used with new project delivery systems? Can you even get them today? Are Parent Corporation guarantees the new type of performance guarantee?

SPEAKERS:

Jonathan J. Dunn
Sedgwick LLP, Irvine, CA

John J. Petro
Williams & Petro Co., LLC, Columbus, OH

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11:30 am – 12:30 pm

WORKSHOP B

CONTRACTING IN THE PUBLIC SECTOR – THE TREND TOWARDS PUBLIC PRIVATE PARTNERSHIPS – A PRACTICAL GUIDE TO WHAT ALL OF THE STAKEHOLDERS SHOULD KNOW BEFORE GETTING INVOLVED.

Increasingly, public bodies are looking at public-private partnerships to finance construction projects. What are the issues and risks faced by the various stakeholders in getting involved with a public-private partnership project? What steps should the stakeholders take to manage these risks before getting involved? What language should contracts and subcontracts include?

SPEAKERS:

Jayne Czik

Citnalta Construction Corp., Bohemia, NY

Michael L. Sterling

Vandeventer Black LLP, Norfolk, VA

11:30 am – 12:30 pm

WORKSHOP C

THE IMPACT OF COLLABORATIVE PROJECT DELIVERY SYSTEMS ON DISPUTES AND DISPUTE RESOLUTION PROCEDURES

Does the delivery system have an effect on the dispute resolution system selected or vice-versa? Can the selection of the PDS reduce disputes? How does the closer relationship among owner, contractor and design professional in many systems affect resolution? How can we improve on the system?

SPEAKERS:

Catherine Shanks,

Dispute Resolution Specialist, Boston, MA

Danny G. Shaw

Baker Donelson Bearman Caldwell & Berkowitz, Mandeville, LA

12:30 pm – 2:00 pm

LUNCH - FORUM BUSINESS MEETING - ELECTION OF OFFICERS, PRESENTATION OF AWARDS

2:00 pm – 2:15 pm

BREAK

2:15 pm – 3:15 pm

PLENARY 3

DOES THE CM HOLD ALL THE CARDS? A CRITICAL LOOK AT CM AS AGENT AND CM AT RISK AND WHERE IT IS HEADED.

Use of the Construction Manager as Agent and Construction Manager at Risk forms of contracting have evolved over the last several years. What is new and where is it headed? How should it be modified to fit the unique needs of the project, large or small? What are the lessons learned from projects gone bad and those that have been successful? The panel will provide you with an update on construction management and unique insights into its future use.

SPEAKERS:

Adrian L. Bastianelli, III (Moderator)

Peckar & Abramson, P.C., Washington, DC

John Carpenter

Kiewit Corporation, Fairfield, CA

Judy Herman

Tishman Co., New York, NY

Chris E. Ng

Gibbs Giden Locher Turner & Senet, Los Angeles, CA

3:15 pm – 3:30 pm

BREAK

3:30 pm – 4:30 pm

WORKSHOP D

CONTRACT PROVISIONS – WHO READS THEM ANY WAY?

Are the industry form contracts suitable, what amendments should be made based on the type of delivery system utilized? What are the key issues to negotiate with each system, and what would you recommend to improve the contracts?

SPEAKERS:

Robert J. MacPherson

Gibbons P.C., Newark, NJ

Melissa Orien Beutler

Holland & Hart, Salt Lake City, UT & Las Vegas, NV

3:30 pm – 4:30 pm

WORKSHOP E

CONTRACTING ACROSS BORDERS: CHOOSE THE RIGHT PROJECT DELIVERY SYSTEM OR FACE THE CONSEQUENCES.

International Projects and cross-border transactions often involve unique types of delivery systems and contracting structures. This session will address these unique aspects of international contracting, the key legal issues associated with these projects and the structure of the Project Delivery Systems.

SPEAKERS:

Roberto Hernandez-Garcia

Comad, S.C., Mexico City, Mexico

Wendy Kennedy Venoit

McElroy Deutsch Mulvaney & Carpenter LLP, Hartford, CT

3:30 pm – 4:30 pm

WORKSHOP F

BADA BING, BADA BANG, BADA BIM – SORTING THROUGH THE SIZZLE TO DRAFT MEANINGFUL CONTRACT TERMS.

Drafting effective contract terms for BIM projects is impacted by numerous factors such as the choice of project delivery systems, how much of the project life cycle modeling is needed, and the level of detail or dimensional reliability required at various points in development of the virtual modeling. This session will analyze a number of these critical factors that drive articulation of BIM contract terms and explain how to contractually manage common risks of the collaborative modeling process, giving specific examples of how to modify terms in AIA and ConsensusDOCS BIM contract forms.

SPEAKERS:

Kim A. Hurtado

Hurtado, S.C., Wauwatosa, WI

Michael J. Vardaro

Zetlin & DeChiara LLP, New York, NY

4:30 pm – 4:40 pm

BREAK

4:40 pm – 5:30 pm

PLENARY 4

DESIGN-BUILD - HAVE WE PERFECTED IT OR DO WE HAVE WAYS TO GO?

Has Design-Build met the promises of 15 years ago when use of this delivery system started accelerating? What are the good, the bad and the ugly of this delivery system? Is Design-Build already being replaced by hybrid systems such as Design Assist or IPD? What lessons can we learn from case law, litigation, and projects that have gone well and gone bad?

SPEAKERS:

Eileen M. Diepenbrock

Diepenbrock Elkin, LLP, Sacramento, CA

Michael C. Loulakis

Capital Project Strategies, Reston, VA

6:00 pm – 8:00 pm

WELCOME RECEPTION AT BELLAGIO HOTEL

Grand Patio

FRIDAY,

April 27, 2012

7:30 am – 12:15 pm

REGISTRATION/EXHIBITS OPEN

7:30 am – 9:00 am

DIVISION BREAKFASTS

8:00 am – 9:00 am

CONTINENTAL BREAKFAST

9:15 am – 9:25 am

OPENING REMARKS AND ANNOUNCEMENTS

9:25 am – 10:40 am

PLENARY 5

DIVERSITY PROGRAM: AN UPDATE ON THE STATUS AND OPERATION OF FEDERAL CONTRACTING PROGRAMS FOR SMALL, MINORITY AND WOMEN OWNED BUSINESSES.

An analysis of recent changes to the status of federal small business and diversity programs including programs for Minority, Women and Veteran Owned Small Businesses. What are the current legal challenges to the constitutionality of diversity program participation goals and set-aside's? What does a prime or general contractor need to know when subcontracting with a minority, women or veteran owned small business? Are joint ventures or mentor-protégé agreements a good option? What do you need to know if you are legal counsel to a small business participating in a SBA diversity program? How does a company challenge the status of a competitor as a minority, women or veteran owned small business?

SPEAKERS:

Larry D. Harris (Moderator)

Fox Rothschild, LLP, Washington, DC

Denise E. Farris

Farris Law Firm LLC, Kansas City, MO

Patricia Meagher

Rogers Joseph O'Donnell, San Francisco, CA

10:40 am – 10:50 am

BREAK

10:50 am – 12:00 pm

WORKSHOP G

THE IMPACT OF PROJECT DELIVERY SELECTION ON THE ROLE OF SUBCONTRACTORS.

How do the Risks, Rewards and Responsibilities of the Subcontractor change based on the Project Delivery System utilized? How does allocation of the 3Rs vary from the point of view of the Sub and Prime? What risks are enhanced or minimized by the Delivery System in place? What are the practical tips for consideration in drafting agreements between the Sub and Prime to fairly allocate the 3Rs during different phases of a project? Are Teaming Agreements the answer to secure the job?

SPEAKERS:

Julia M.I. Holden Davis

Bankston Gronning O'Hara, Anchorage, AK

Richard A. Stockenberg

Gallop Johnson & Neuman, L.C., St. Louis, MO

10:50 am – 12:00 pm

WORKSHOP H

THE ROLE OF DESIGN PROFESSIONALS ON EACH DELIVERY SYSTEM.

What are the design professional's risks under different PDS's? How do they manage those risks in the different PDS's? How do the various industry contract forms address the various risks and what new risks are created by the forms themselves? Are there increased risks for design professionals when providing estimates in various PDS's? How do those costs get covered?

SPEAKERS:

Keith J. Bergeron

Deutsch Kerrigan & Stiles, New Orleans, LA

David W. Zimmerman

Holland & Hart, Salt Lake City, UT

10:50 am – 12:00 pm

WORKSHOP I

THE ROLE OF OWNERS AND LENDERS AND HOW THEY DIFFER WITH THE CHOICE OF DELIVERY SYSTEM.

What are the key differences as design is integrated further and further into the delivery process: First with construction, then with construction and O&M, and finally with finance, construction and O&M? How does an owner's preparation change with the delivery system? How do procurement processes differ? How does the owner's role during performance change with the delivery system? Do key clauses remain? How and who do they protect? Does a Lender's involvement offer opportunities to independently confirm project viability?

SPEAKERS:

Joel K. Gerber

Rubnitz, Gerber & Ziblut, P.C., Savannah, GA

Dr. John B. Miller

Barchan Foundation, Winchester, MA

12:00 pm

PROGRAM ADJOURNS

1:00 pm – 6:00 pm

YOUNG LAWYERS SERVICE PROJECT

co-sponsored by ARCADIS

SATURDAY, April 28, 2012

7:00 am – 8:15 am
CONTINENTAL BREAKFAST

8:20 am – 8:30 am
OPENING REMARKS

8:30 am – 9:45 am
PLENARY 6

FEDERAL GOVERNMENT CONTRACTING SYSTEMS.

A look at the various delivery systems used by the federal government as well as a discussion of their effectiveness. What are the statistics on claims reduction (if any)? Is the Government able to get the contractors it wants? Is government running afoul of “full and open competition requirements?” From the Contractor’s perspective, how has working for the federal government changed over the past 10-20 years as a result of the new PDS being implemented?

SPEAKERS:

Michael D. Tarullo (Moderator)
Ice Miller LLP, Columbus, OH

Bill H. Gammon
*Nelson Mullins Riley & Scarborough,
Raleigh, NC*

Tom H. Gourlay, Jr.
U.S. Army Corps of Engineers, Washington, DC

9:45 am – 10:00 am
BREAK

10:00 am – 11:00 am
PLENARY 7

INTEGRATED PROJECT DELIVERY – THE GAME CHANGER.

Integrated Project Delivery (“IPD”) is a value based delivery method that revolutionizes the process of design and construction by aligning key parties’ interests, project goals and outcomes. Come learn about IPD, how it works, how project performance is enhanced through collaborative delivery, basic deal structures and contract negotiation.

SPEAKERS:

Joseph A. Cleves
*Dressman, Benzinger, Lavelle, PSC,
Cincinnati, OH*

Lisa Dal Gallo
Hanson Bridgett LLP, San Francisco, CA

11:00 am – 11:10 am
BREAK

11:10 am – 12:15 pm
PLENARY 8

21ST CENTURY ETHICS ISSUES FOR CONSTRUCTION LAWYERS.

This session will focus on the activities of the ABA Commission on Ethics 20/20 recommendations and proposals. The Commission was created in August, 2009, and charged with the responsibility for examining the ethical impact of advancing technology and globalization on the legal profession. We will offer reactions and comments to the proposal from a construction lawyer’s perspective.

SPEAKERS:

Leslie K. O’Neal-Coble
Brasfield & Gorrie, LLC, Lake Mary, FL

James J. Scott
Greensfelder Hemker & Gale, PC, St. Louis, MO

Andrew Perlman
Suffolk University, Boston, MA

12:15 pm
PROGRAM ADJOURNS

1:15 pm
**GOLF TOURNAMENT AT
BALI HAI GOLF COURSE**

No onsite registration available.



Special Events

THURSDAY

APRIL 26, 2012

7:00 am - 8:30 am

Women Attendees
Networking Breakfast
Orientation Breakfast

A breakfast to welcome those who are attending their first Forum meeting and to welcome back those who are attending for the first time in five years. Come learn about the Forum and all it does.

12:30 pm - 2:00 pm

Luncheon

During lunch the Forum will recognize the Immediate Past Chair, Governing Committee Members and Division Chairs who are rotating off leadership positions, as well as contributing editors of our publications. Please join us as we honor these individuals who have dedicated their time and service to making the Forum a success.

6:00 pm - 8:00 pm

Welcome Reception
at the Bellagio Hotel
Grand Patio



FRIDAY

APRIL 27, 2012

7:30 am - 9:00 am

Division Breakfasts

1:00 pm - 6:00 pm

Young Lawyers Service Project
co-sponsored by ARCADIS

6:00 pm - 8:00 pm

Diversity Reception
co-sponsored by Capital
Project Management, Inc.

SATURDAY

APRIL 28, 2012

1:15 pm - 6:30 pm

Golf Tournament at
Bali Hai Golf Course

Conference Information

1. HOTEL INFORMATION:

The conference will be held at Bellagio Hotel located at 3600 Las Vegas Blvd, Las Vegas, NV 89109; Phone 702-693-7111. Visit the hotel's website at www.bellagioresort.com for further information.

2. HOTEL RESERVATIONS:

The Forum on the Construction Industry has negotiated a special room rate of \$209 per single/ double room. A 12% sales tax will also apply per night. You may call the hotel directly at 702-693-7111 and mention the ABA Forum on the Construction Industry 2012 Annual Meeting. We have reserved a limited block of rooms through March 27, 2012. You must register for the conference prior to making your hotel reservation. After this date, and if we are sold out of our block, the Hotel Reservation Office will assign rooms on a space available basis at a rate they choose. All changes and cancellations to guaranteed hotel reservations must be made with the Hotel within 24 hours of the scheduled day of arrival to avoid a one night's cancellation charge.

3. AIR TRAVEL:

McCarren International Airport services the Las Vegas area. The airport is conveniently located less than two miles away from the main Las Vegas strip. Taxicab transportation is available at the airport and will average under \$20 for one person and will take less than 15 minutes.

Airfare discounts to ABA meetings are available through ABA Online Travel. To access ABA Online Travel, go to www.abanet.org, and click on the link at the bottom of the ABA Calendar Box. At ABA Online Travel you will have automatic access to meeting airfare discounts, web fares and web book only airlines. The ABA's toll-free number for Orbitz for Business (OFB) is 877-222-4185.

4. PROGRAM REGISTRATION:

To register for all programs and events described in this brochure, we encourage you to register online at www.americanbar.org/groups/construction_industry. Confirmations will be emailed to you within 72 hours of registration receipt to the email provided. In order to be included in the list of program attendees, you must register by April 9, 2012. Guest tickets for special events are available for an additional fee. Please see the registration form for price details.

5. ON SITE CHECK IN:

Beginning Wednesday, April 25, 2012 at 10:00 a.m. - 5:00 p.m., attendees may check in at the ABA registration desk to pick up name badges and course materials.

6. ON SITE REGISTRATION:

On site Registration is available for those persons who missed the registration deadline starting on Wednesday, April 25 at 3:00 pm. If you plan to register at the door, please call the Forum at 312/988-5678 on or before Friday, April 20, 2012, to confirm that space is still available. Failure to call in advance may preclude admission to a sold out conference. On site registrants must pay the registration fees by check, money order, Visa, MasterCard, or American Express. NO registrations will be accepted without payment.

7. TUITION INFORMATION:

Tuition includes admission to the program, welcome reception, continental breakfasts, beverage breaks, luncheon, and course materials. The Forum will be providing this year's program materials and CLE Certificates on CD-Rom only.

8. CANCELLATION POLICY:

Registrants who are unable to attend the conference will receive a refund less a \$50 administrative fee if written cancellation is received by April 9, 2012. Cancellations may be faxed to 312/988-5677. No refunds will be granted after April 9, 2012. Substitutions are acceptable, or conference materials will be sent in lieu of a refund after the program. The ABA reserves the right to cancel any programs and assumes no responsibility for personal expenses.

9. CLE CREDIT:

ABA programs ordinarily receive CLE credit in AK, AL, AR, AZ, CA, CO, DE, FL, GA, GU, HI, IA, ID, IL, IN, KS, KY, LA, ME, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, VI, WA, WI, WV, and WY. These states sometimes do not approve a program for credit before the program occurs. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit www.americanbar.org/groups/construction_industry : or contact Melissa Reesh at Melissa.Reesh@americanbar.org

10. MEMBERSHIP:

To encourage registrants to join the ABA Forum on the Construction Industry, the reduced member's tuition rate will be extended to registrants who join the Forum when they register for the conference. Forum membership dues are \$50 for attorneys/associates and \$5 for law students. Membership in the ABA and one Section is a prerequisite to Forum membership. Please include a separate check (payable to the American Bar Association) for membership dues.

11. ADDITIONAL COURSE MATERIALS:

Materials for all programs may be available for purchase after the conference by calling the ABA Service Center at 1-800-285-2221.

12. TAX DEDUCTION FOR EDUCATIONAL EXPENSES:

In the United States an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals and lodging expenses (see Treas. Reg. Sec. 1.162-2) *Coughlin v. Commissioner*, 203 F.2d 307 (2nd Cir. 1953.)

13. AMERICANS WITH DISABILITIES ACT:

If special arrangements are required for disabled individuals to attend this program, please contact the Forum in writing by April 9, 2012 at the American Bar Association, 321 N. Clark Street, Chicago, Illinois, 60654. Fax: 312/988 5677.

14. DRESS:

In keeping with Forum tradition, participants are encouraged to wear business casual attire during the programs and to the special events.

15. FOR THE LATEST PROGRAM INFORMATION:

Please visit the ABA Forum on the Construction Industry's website: www.americanbar.org/groups/construction_industry. For further information on the city, travel, activities and entertainment options, visit www.visitlasvegas.com

16. QUESTIONS:

If you have questions or require additional conference information, please call 312/988 5678. Fax: 312/988 5677; e mail: melissa.reesh@americanbar.org



American Bar Association
Forum On The Construction Industry, MS 18.2
321 North Clark Street
Chicago, IL 60654
www.americanbar.org/groups/forums/construction_industry

2012 Annual Meeting



SAVE THE DATES:

2012 Fall Meeting

October 18-19, 2012

Sheraton Boston Hotel, Boston, MA

2013 Midwinter Meeting

January 31- February 1, 2013

Naples Grande, Naples, FL

2013 Annual Meeting

April 25- April 27, 2013

St. Regis Monarch Beach, Dana Point, CA

[PRESORTED]
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Association