

38TH ANNUAL CONSTRUCTION LAW CONFERENCE



**MARCH 6 & 7, 2025
THE LA CANTERA RESORT & SPA
SAN ANTONIO, TEXAS**

Earn up to 12.00 Hours MCLE Credit, including 2.00 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

38TH ANNUAL CONSTRUCTION LAW CONFERENCE

March 6 & 7, 2025 ♦ The La Cantera Resort & Spa ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, MARCH 5, 2025

- 12:00 **GOLF TOURNAMENT** – *Shot Gun Start*
Only conference registrants, presenters and 2025 sponsor attendees are eligible to register.
The Resort Course at The La Cantera Resort
- 2:00 **PRE-REGISTRATION PICK-UP** – Attendees who pre-registered by February 26 may pick-up their badge and materials from 2:00-4:30pm.
- 4:00 **TEXAS WOMEN'S CONSTRUCTION LAW GROUP NETWORKING EVENT** – For registered conference attendees only. *Please indicate your RSVP to attend on the registration form.* – Sponsored by Socotec
- 5:30 **RECEPTION** – In cooperation with the Young Lawyer's Committee of the Construction Law Section – Sponsored by Rimkus

THURSDAY, MARCH 6, 2025

PRESIDING OFFICER: Thomas J. Walthall, Jr., San Antonio

- 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 Fiebig Architecture, PLLC
- 8:50 **WELCOME ON BEHALF OF THE CONSTRUCTION LAW FOUNDATION**
Misti L. Beanland, Dallas
- 9:00 **CASELAW UPDATE I** – Analysis on collection of recent case law affecting the construction industry.
William W. Allensworth, Austin
- 9:45 **SECOND LOOKS & FIRST GLANCES: VIEWPOINTS ON THE POST-ATRIUM LANDSCAPE OF LIQUIDATED V. ACTUAL DAMAGES** – Now that Texas is officially a second-look state, Owners and GCs must analyze potential actual damages when drafting LD clauses on the front-end. This presentation discusses liquidated v. actual damages through the lens of both contract negotiation and litigation, with viewpoints from both Owner and GC perspectives and practical tips on what has worked (and what hasn't) in the post-Atrium environment.
Charlotte Fletcher, Dallas
- 10:30 **BREAK** – Sponsored by Secretariat
- 11:00 **WHO GIVES A @#%\$ ABOUT AN OXFORD COMMA? A DISCUSSION OF CANONS OF CONSTRUCTION IN CONSTRUCTION LAW** – With due regard to the indie band Vampire Weekend and their colorful song about the controversial comma, Texas courts often rely upon and enforce canons of construction thereby elevating the importance of giving a @#%\$ about punctuation, grammar, and semantics. This session will discuss (1) canons common to construction disputes; (2) cases relying upon the canons; and (3) practical recommendations to better deploy arguments in litigation and draft tighter contracts.
Amy K. Wolfshohl, Houston
- 11:45 **RAFFLE PRESENTATION** – Tunnel to Towers
- 12:00 **LUNCHEON** – *Tickets available for \$25 each.*
THE HISTORY OF THE CONSTRUCTION LAW SECTION
Richard A. Capshaw, Dallas
Gregory M. Cokinos, Houston
Scott Griffith, Dallas

PRESIDING OFFICER: Joshua W. Mermis, Houston

- 1:30 **LEGISLATIVE UPDATE** – Update on the 88th Legislative Session and anticipating the 89th Legislative Session.
Ian P. Faria, Houston
- 2:00 **HOW LONG OH LORD IS TOO LONG?** – Delays are lasting a ludicrously long time. When do I get to quit, and how much if anything can I collect in damages?
Timothy C. Ross, Houston

- 2:45 **TAIA UPDATE** – A dozen years, a few cases, and some clarity? Not so fast!
Patrick J. Wielinski, Dallas
- 3:15 **BREAK** – Sponsored by FTI Consulting, Inc.

CONCURRENT SESSIONS - Choose Sessions A or B

Sessions A - PRESIDING OFFICER: Joshua W. Mermis

- 3:30 **CRAFTING AN EPC CONTRACT: PERSPECTIVES FROM THE OWNER AND CONTRACTOR** – In-house counsel from an Owner and a Contractor will discuss negotiating and drafting engineering, procurement, and construction contracts. Topics include standard of care and performance; warranty durations and remedies; cost escalation; supply chain disruptions; risk allocation for site conditions; performance security; change management; and more! This panel will provide drafting tips and helpful hints that will be valuable not only for those involved in advising clients on EPC contracts, but for other types of design and construction contracts as well.
Tracy Russell Galimore, Houston
Jonathan S. Miles, Houston
- 4:15 **A PROJECT LIFE CYCLE THROUGH THE OWNER LENS** – This session will highlight key considerations when representing owners in project planning and delivery, including programming, selection of the project delivery method, collateral agreements that implicate contract negotiations; management of project documentation; and successful close-out.
Cathy L. Altman, Dallas
- 4:45 **INSURANCE TRIGGERS, TRICKS, AND TRAPS, OH MY!** – Problems abound for the unwary. How can you ensure insurance remains in play throughout your dispute (and after)? Insider information for protecting your client – and your firm – for those disputes that don't readily resolve.
Blair Dancy, Austin

Sessions B - PRESIDING OFFICER: Misty H. Gutierrez

- 3:30 **PRIVATE OR PUBLIC – AND WHY IT MATTERS** – Texas has a growing number of projects such as charter schools, prisons, airport and hospital facilities, and other types of infrastructure concerning private development on public land. The patchwork of applicable statutes, duties, and remedies, can be broad and difficult to navigate. We will provide practical information and resources on topics impacting every project stage and type of practitioner, including procurement and funding mechanisms, bid and contract drafting issues from various perspectives, hybrid bonds and applicable payment laws, along with litigation topics such as how to bring a claim and applicable statutes of limitation.
Bethany F. Beck, San Antonio
Kristen L. Sherwin, Dallas
- 4:15 **PRODUCTS LIABILITY CLAIMS IN CONSTRUCTION LAW** – Identifying and navigating products liability claims in construction. A discussion of Texas Products Liability Law and its impact in the construction dispute context with reference to Chapter 82 (Texas Products Liability Act) requirements and the most often encountered scenarios in which a products claims may be residing within a construction dispute.
Jon Paul Hoelscher, Houston
- 4:45 **FORUM FACE-OFF: WHEN ARBITRATION AND JURISDICTION COLLIDE IN CONSTRUCTION CONTRACTS** – A dive into the tug-of-war between forum selection clauses and arbitration provisions in construction contracts, exploring when each prevails and how “home court statutes” are applied in the context of conflicting venue clauses.
Sydney M. Warren, Houston

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

FRIDAY, MARCH 7, 2025

PRESIDING OFFICER: David Gregorcyk, Austin

- 7:30 **CONTINENTAL BREAKFAST** – Sponsored by Peritia Partners LLC
- 8:15 **CASE LAW UPDATE II** – A continuation of analysis of recent case law affecting the construction industry.
William W. Allensworth, Austin
- 8:45 **WHAT TYPE OF EXPERT DO I NEED?** – Exploring the interplay between what type of professional to use as an expert (architect vs. engineer vs. contractor vs. surveyor vs. landscape architect vs. scheduler vs. geologist), as well as what the expert actually can testify to under the Daubert/Robinson factors, applicable case law, and certificate of merit requirements, and other expert issues such as contract interpretation experts, client experts on damages, and more.
Heather M. Beam, Austin
William B. (Ben) Westcott, Houston
- 9:30 **JURY CHARGES FOR CONSTRUCTION CASES** – Without a construction-specific Pattern Jury Charge as your guide, nuanced questions can be difficult to draft without fear of appeal. This panel will provide examples and tips for drafting and arguing a successful charge while also discussing the need for a PJC construction law edition and any developments towards that goal.
Moderator: Cara D. Kennemer, Fort Worth
Curt M. Covington, Rockwall
Bradley W. Snead, Houston
- 10:15 **PIONEER AWARD: PAUL SANDERFORD** – The Pioneer Award is given by the Foundation as a recognition for lifetime achievement, a career of service, and extraordinary contribution to the practice of Construction Law.
- 10:25 **BREAK** – Sponsored by Bryant Consultants, Inc.
- 10:50 **INSURANCE LAW UPDATE – THE GOOD, THE BAD, AND THE INCREDIBLY CONFUSING** – A tour of the wild world of insurance law in the construction realm where we will unpack the latest court cases, policy provisions, and coverage issues that have left even the most seasoned lawyers scratching their heads!
Douglas P. Skelley, Austin
- 11:20 **THE ART AND SCIENCE OF CASE ASSESSMENT AND EVALUATION** – Case evaluation and liability analysis are the foundations for legal strategies and settlement valuations. This session will delve into the art and science of case evaluation, exploring key aspects, strategies, and practices for evaluating probable liability outcomes through trial or arbitration. The session will also discuss the benefits of a structured, data-backed approach to legal analysis to assist clients in determining potential settlement value.
William I. (Bill) Gardner, Dallas
- 11:50 **LUNCHEON** – *Tickets available for \$26 each.*
THE FUTURE IS NOW: THE RISE OF AI IN CONSTRUCTION AND CONSTRUCTION LAW – The panel will discuss how AI is impacting the construction industry, the construction bar, and the judiciary. They will also address the risks and ethical issues raised by this new technology.
Jeffrey A. Brannen, Dallas
Joshua W. Mermis, Houston
The Honorable Jason K. Pulliam, San Antonio

PRESIDING OFFICER: Misty H. Gutierrez, Plano

- 1:20 **BREAK** – Sponsored by Walker Consultants
- 1:30 **RAFFLE DRAWINGS**

HOTEL INFORMATION

38th ANNUAL CONSTRUCTION LAW CONFERENCE ♦ March 6 & 7, 2025

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

The La Cantera Resort & Spa is our host hotel for the conference. As of press time, the group room block was filled to capacity with early-bird registrants but the status changes daily and rooms will only be provided on a space and rate-available basis going forward. If you plan to attend, we encourage you to secure a reservation at a nearby venue as soon as possible. Visit the online registration page on the Construction Law Foundation website below for a list of available courtesy blocks with special rates at nearby venues. You may then wish to contact The La Cantera Resort directly near the end of February to see if any availability has opened due to cancellations within the room block for the 38th Annual Construction Law Conference. Also note that additional parking areas at The La Cantera Resort are being made available during the conference to better accommodate drive-in attendance.

REGISTRATION FORM

Mail to: The Construction Law Foundation of Texas
38th 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 14).....\$600.00
- Pre-Registration Fee for Construction Law Section Members.....\$500.00
(due by 5 p.m. February 14)
- Registration *after 5 p.m. February 14 & before 5 p.m. February 26*...\$+250.00
- Door Registration *after 5 p.m. February 26 (Available Onsite Only)*.....\$+250.00
- Construction Law Section Dues (eligible for the member registration fee)..... \$ 30.00

___ Thursday Luncheon Ticket at \$25 each..... \$ _____
___ Friday Luncheon Ticket at \$26 each..... \$ _____

- RSVP for Texas Women's CLG Networking Event on Wednesday, March 5, 2025
- I will play in the Golf Tournament on Wednesday, March 5, 2025**
Green Fee (includes range balls and shared cart).....\$155.00
My handicap is _____ . ☞ Required

Conference Materials:

Registrants will automatically receive the electronic USB version of the conference materials. You may also pre-purchase the printed binder version for an additional fee.

- Add Printed Version (3-Ring Binder) at \$50 + .0825 tax.....\$ 54.13

I cannot attend the conference. Please forward the following:

- Audio Files & Course Materials (On USB Only) at \$500 + .0825 tax.....\$541.25
- Course Materials Only (On USB Only) at \$200 + .0825 tax.....\$216.50

TOTAL ENCLOSED.....\$ _____

No refunds after 5:00 p.m. Friday, February 28, 2025. See cancellation policy on back cover. (Call for Government and Student Discount Information)

Name _____

Firm _____

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Telephone _____ Fax _____

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Make Check Payable to: The Construction Law Foundation of Texas

Please Charge: AMERICAN EXPRESS VISA MASTERCARD

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Name on Card (Please Print) _____

CVV Code (3 digits for MC/Visa, 4 digits for AmEx): _____

Billing Address (Street+C/S/Z): _____

Authorized Signature _____

SEND THIS FORM TO THE CONSTRUCTION LAW FOUNDATION OF TEXAS.

1:45 **MECHANIC'S LIENS – WHAT DID NOT GET FIXED IN 2021 AND WHAT NEW PROBLEMS WERE CREATED?** – After years of adding new bells and whistles to the mechanic's lien laws (Chapter 53 of the Property Code), the Legislature finally made an effort to simplify the statute. While clearly making it a bit less confusing and complicated, did they fix all the problems with the old law and did the changes inadvertently create new problems? What inconsistencies are there with perfecting claims for public and private projects (or "P-3" projects which are "in-between")? How can some of those (new and old) problems be fixed – hopefully without going back to a more complicated statute?
Robert C. Bass, Jr., Austin

2:15 **THE ECONOMIC LOSS RULE REVISITED: AN UPDATE ON THE ECONOMIC LOSS RULE IN TEXAS A DECADE AFTER CHAPMAN CUSTOM HOMES** – This session and materials will provide an update on Texas and federal opinions analyzing the economic loss rule in Texas, following the landmark decision in *Chapman Custom Homes, Inc. v. Dallas Plumbing Co.*, 445 S.W.3d 716 (2014) (per curiam).
Sean M. McChristian, Houston

3:00 **STRATEGIES FOR SETTLEMENT WHEN THE INSURER WON'T PAY** – Discussion of Texas insurance law and creative strategies to use when the insurer takes a "no coverage" position or just simply refuses to settle, including use of the Stowers Doctrine, consideration of costs of defense, threats of bankruptcy, and other tips and tricks for attempting to maximize settlement dollars.
Rebecca DiMasi, Austin

3:30 **ADJOURN**

PRESIDENT, THE CONSTRUCTION LAW FOUNDATION OF TEXAS

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

PRESIDING OFFICERS

David Gregorcyk, Journeyman Construction, Inc., Austin
Misty Hubbard Gutierrez, Misty H. Gutierrez, PLLC, Plano
Joshua W. Mermis, West Mermis PLLC, Houston
Thomas J. Walthall, Jr., Sanderford & Carroll P.C., San Antonio

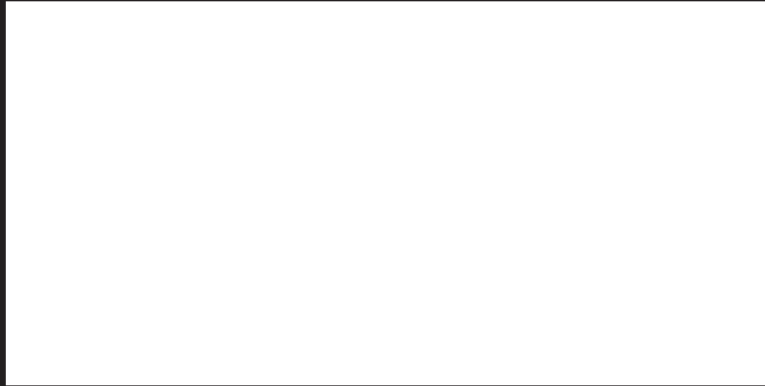
CONFERENCE FACULTY

William W. Allensworth, Allensworth Law, Austin
Cathy L. Altman, Carrington, Coleman, Sloman & Blumenthal, L.L.P., Dallas
Robert C. Bass, Jr., Winstead PC, Austin
Heather M. Beam, Thompson, Coe, Cousins & Irons, LLP, Austin
Bethany Beck, Sanderford & Carroll P.C., San Antonio
Jeffrey A. Brannen, Balfour Beatty Construction, Dallas
Richard A. Capshaw, Capshaw & Associates, Dallas
Gregory M. Cokinos, Cokinos | Young, Houston
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Christopher Blair Dancy, Cain & Skarnulis PLLC, Austin
Rebecca DiMasi, Shidlofsky Law Firm PLLC, Austin
Ian P. Faria, Bradley Arant Boulton Cummings LLP, Houston
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Cara D. Kennemer, Underwood Law Firm, P.C., Fort Worth
Sean M. McChristian, Porter Hedges LLP, Houston
Joshua W. Mermis, West Mermis PLLC, Houston
Jonathan S. Miles, Quanta Infrastructure Solutions Group, LLC, Houston
The Honorable Jason K. Pulliam, United States District Court, San Antonio
Timothy C. Ross, Andrews Myers, P.C., Houston
Kristen L. Sherwin, Winstead PC, Dallas
Douglas P. Skelley, Shidlofsky Law Firm PLLC, Austin
Bradley W. Snead, Wright Close & Barger, LLP, Houston
Sydney M. Warren, Bradley Arant Boulton Cummings LLP, Houston
William B. (Ben) Westcott, Andrews Myers, P.C., Houston
Patrick J. Wielinski, Cokinos | Young, Dallas
Amy K. Wolfshohl, Porter Hedges LLP, Houston



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San Antonio, Texas

Cover Art – “Pump House #1 on a Saturday in May” 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.

***Tunnel to Towers Foundation (T2T.org)** — We are proud to partner with T2T to offer the opportunity for attendees to contribute during the conference. All donations will benefit T2T and their mission to help America’s heroes by providing mortgage-free homes to Gold Star and fallen first responder families and by building specially-adapted smart homes for catastrophically injured veterans and first responders.

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 and door registrations are subject to additional fees.

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

Registration by Phone — 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 full 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 files will automatically be mailed 3-4 weeks after the conference to any prepaid registrants who did not receive a refund and were not able to attend.

2025 PLANNING COMMITTEE
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Sean M. McChristian, Houston
Joshua W. Mermis, Houston
Jerry M. Negrete, Austin
Matthew C. Ryan, Austin
Douglas P. Skelley, Austin

This course has been approved for 12.00 hours credit (including 2.00 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 14.40 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 will be submitted for 12.00 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 Ankura Consulting Group, LLC
- * **Name Badge Lanyards** – Sponsored by Weaver
- * **Notepads** – Sponsored by Thornton Tomasetti
- * **Power Strips** – Sponsored by Precision Scheduling Consultants, LLC
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- * **Videotaping** – Sponsored by U.S. Legal Support

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