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ABA Forum on the Construction Industry,
 TIPS Fidelity and Surety Law Committee
 and ABA Section of Public Contract Law



PEOPLE

PUBLICATIONS

PROGRAMS

2010 MidWinter Meeting

GOVERNMENT
 CONSTRUCTION CONTRACTING

January 28, 2010

Westin St. Francis Hotel
 San Francisco, CA

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



In January, San Francisco, California, opens its golden gate to welcome the Forum back for its 2010 Mid-Winter Meeting. Like San Francisco itself, this meeting is a great mix of the new and the old. The Forum returns to the historic Westin St. Francis Hotel and reunites with our friends at the Fidelity & Surety Law Committee. The Forum also welcomes a new co-sponsor, the ABA Section of Public Contract Law. Together, we've assembled a timely program in the hottest area in the U.S. construction market and perhaps the most challenging area in U.S. construction law: "Government Construction Contracting."

The program will provide instruction by many of the country's leading government contracting and construction law experts in the most common and most cutting edge issues facing participants in projects owned or funded by federal, state or local governments. The topics will include hot issues in contractor claims against the federal government; tricky issues on publicly-funded, privately-owned projects; government claims for defects discovered after project acceptance; mandatory disclosures, compliance programs, and false claims; the legal issues surrounding federal and state governments' use of design-build; and legal ethics issues unique to advising government construction contractors.

This full-day program will include six plenary sessions, all with the goals of providing counsel for government owners, contractors, designers, sureties and other project participants with must-have information to assist their respective clients, whether they are new to government construction or just trying to keep up with the latest legal and market developments.

We kick off this program with an in-depth presentation on contractor claims: the technical requirements, recovery strategies and hot topics. From there, we move to privately-owned, publicly-funded projects: when and to what extent do public construction requirements – from prevailing wage to payment bonds to false claims – apply? The offerings continue with a case study by two of the litigation attorneys and one of the judges in the federal claim litigation and state court insurance coverage litigation arising from one of the largest government claims for latent defects in history. Following lunch, we turn to perhaps the hottest of topics in government contracting – compliance and false claims: the panel will discuss the impact of the new compliance program and disclosure requirements in the Federal Acquisition Regulation, the new amendments to the civil False Claims Act, special reporting issues under the American Recovery and Reinvestment Act, and how these and other compliance laws are impacting construction. We then spend time on the unique legal issues in government design-build projects, including how we got here and where we are going. And, finally, the day concludes with an ethics panel on the legal ethics issues particular to advising government contractors.

We are pleased to have a mix of speakers, including current and former judges, former government attorneys, and counsel for contractors, sureties and whistleblowers. They are drawn from within and outside the Forum, with experience ranging from court litigation to government contracting to administrative law to insurance coverage and surety defense.

Besides the program, there are other opportunities provided to each attendee: Division breakfasts, networking Thursday evening at the reception, and, lest we forget, all that San Francisco has to offer.

Please come and join this timely program devoted to legal issues in government construction. We are thrilled to provide you the venue and the topics to help you and your clients make the climb to the top of the government construction law hill. It's a long way up, but the view is great! We look forward to seeing you in San Francisco.

Aaron P. Silberman

PROGRAM CHAIR

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San Francisco, CA*

Terrence L. Brookie

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Washington, DC



PROGRAM SCHEDULE

WEDNESDAY, JANUARY 27

10:00 AM – 6:00 PM
ADVANCED REGISTRATION/
INFORMATION

THURSDAY, JANUARY 28

7:30 AM – 5:00 PM
REGISTRATION/
EXHIBITION OPEN

7:30 – 8:45 AM
CONTINENTAL BREAKFAST
(Available to paid registrants)

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

8:45 – 9:45 AM
PLENARY 1:
**HOT ISSUES IN PURSUING
CLAIMS AGAINST THE
FEDERAL GOVERNMENT**

This session will address the latest developments and law regarding claims against the Federal Government including: Contract Disputes Act requirements, choosing between Boards and Court of Fed. Claims, differing site conditions, changes, delays, pass-through claims, and recoverable costs (including Eichleay); authority; and the ability of performance bond sureties to pursue claims against Government directly.

SPEAKERS:

James Nagle
Oles Morrison, Seattle, WA

Judah Lifschitz
Shapiro Lifschitz & Schram, Washington, DC

Hon. Steven Reed
Smith Currie & Hancock, LLP, Washington, DC
(formerly Judge Corps of Engineers Board of Contract Appeals)

9:45 – 10:30 AM

PLENARY 2:
**IS IT PUBLIC OR ISN'T IT?:
REQUIREMENTS AND
PITFALLS ON PUBLICLY-
FUNDED PRIVATELY-OWNED
PROJECTS**

When is a project "public" for purposes of legal requirements regarding prevailing wage (Davis-Bacon), bonds (Miller Act), false claims, affirmative action, and restrictions on project delivery (design-build)? Who bears the risk of getting it wrong? How do sureties and insurance carriers deal with these uncertainties?

SPEAKERS:

Bob Carney
Whiteford Taylor & Preston LLP, Baltimore, MD

Roland Nikles
Bell Rosenberg & Hughs LLP, Oakland, CA

10:30 – 10:45 AM
BREAK

10:45 – 11:55 AM
PLENARY 3:
**IS IT REALLY OVER WHEN
IT'S OVER? ONGOING LESSONS
FROM A MAJOR PUBLIC
CONSTRUCTION LATENT
DEFECTS CASE**

The panel will discuss the effect of Government acceptance of work on its ability to recover for construction defects, including latent defects and warranty work. They also will discuss the impact of acceptance on the liability of the insurer and surety.

SPEAKERS:

Neil O'Donnell
Rogers Joseph O'Donnell, San Francisco, CA

Hon. Cheryl Scott
Judge, Armed Services Board of Contract Appeals, Washington, DC

Jordan Stanzler
Stanzler & Funderburk, San Francisco, CA

12:10 – 1:40 PM
LUNCH

LUNCHEON SPEAKER:

Donald MacDonald
MacDonald Architects, San Francisco, CA

Mr. McDonald will discuss the design, construction, and history of the Golden Gate Bridge.



1:40 – 2:50 PM

PLENARY 4:

LANDMINES IN PUBLIC CONSTRUCTION: MANDATORY DISCLOSURES, COMPLIANCE PROGRAMS, FALSE CLAIMS, ANTI-KICKBACK, AND FRAUD

There have been significant recent changes in the statutes and regulations relating to false claims and compliance. This session will cover these recent changes and the general requirements a contractor must follow in performing government contracts in order to stay out of trouble. The panel also will discuss the surety's liability for false claims.

SPEAKERS:

William Thompson, Jr.
Peckar & Abramson, PC, Washington, DC

Claire Sylvia
Phillips & Cohen LLP, San Francisco, CA

Don Gavin
Ackerman Senterfitt, Vienna, VA

2:50 – 3:45 PM

PLENARY 5:

TURNING A BATTLESHIP: DESIGN-BUILD ON FEDERAL AND STATE CONSTRUCTION PROJECTS

Federal and state governments now have embraced design-build project delivery for a number of years. What are the legal restrictions on its use? Where has it been successful, and what problems have been encountered? What case law has developed in this area? What problems has the surety industry faced with Government design-build projects?

SPEAKERS:

Barbara Gadbois
Gibbs, Giden, Locher, Turner & Senet LLP, Los Angeles, CA

John Heisse
Howrey LLP, San Francisco, CA

MODERATOR:

Joe Kovars
Ober Kaler Grimes & Shriver, Baltimore, MD

**3:45 – 4:00 PM
BREAK**

4:00 – 5:00 PM

PLENARY 6:

LEGAL ETHICS ISSUES IN FEDERAL CONSTRUCTION CONTRACTING

The panel will address ethical issues that are unique to Government contracting in conflicts of interest, unintended representation of subcontractors via pass-through claims, and special conflict issues arising under mandatory disclosure and Recovery Act requirements.

SPEAKERS:

Dorothy E. Terrell
Smith Pachter McWhorter, Vienna, VA

Jennifer Dauer
Diepenbrock & Harrison, Sacramento, CA

Julia Blackwell Gelinis
Frost Brown Todd LLC, Indianapolis, IN

**5:00 PM
ADJOURN**

**6:00 - 8:00 PM
FSLC WELCOME RECEPTION**

Free with Friday Registration. Thursday only registration may purchase reception tickets separately.

**FRIDAY,
JANUARY 29**

**7:00 - 8:00 AM
FSLC WOMEN'S
NETWORKING BREAKFAST**

Free with Friday Registration

**7:00 - 3:00 PM
EXHIBITS**

**7:00 - 4:30 PM
REGISTRATION AND
CONTINENTAL BREAKFAST**

**8:30 - Noon
SPOUSE EVENT**
Free with Friday Registration

**8:30 - 4:30 PM
TIPS/FSLC PROGRAM**

CONFERENCE INFORMATION

ADVANCE REGISTRATION

DEADLINE – JANUARY 15, 2010

Please complete and return the attached registration form with your payment by JANUARY 15, 2010. If you wish to have your name appear on the pre-registration list distributed at the program, we must receive your registration no later than JANUARY 15, 2010. We encourage you to register online at www.abanet.org/forums/construction. Conference registrations will only be accepted when accompanied by a check, Visa, American Express, or MasterCard information. Credit card registrations may be FAXED to the ABA Forum on the Construction Industry, at (312) 988-5677. Registrations cannot be held without payment.

ON SITE REGISTRATION

On site registration is available for those persons who missed the registration deadline. If you plan to register at the door, you must call (312) 988-5678 at least 72 hours before the conference to confirm that space is still available. Failure to call in advance may result in not being admitted to a sold out program. On site registration will only be accepted when accompanied by a check, money order, American Express, Visa or MasterCard information. Registrations will not be accepted without payment.

REGISTRATION CONFIRMATION

If you do not receive a written confirmation by January 22, 2010, please call the Forum Assistant at (312) 988-5678 to verify that your registration form and check were received. Failure to call in advance of the program may result in not being admitted.

TUITION

Tuition includes admission to the program, coffee breaks, lunch, and one set of program course materials. Lunch is limited to registrants, faculty and members of the press.

CANCELLATION POLICY

No refunds will be granted for cancellations received after JANUARY 15, 2010. To receive a refund (less a \$50 administrative fee), cancellations must be made IN WRITING and RECEIVED on or before JANUARY 15, 2010. Registrants who are unable to attend may send a substitute or receive course materials in lieu of a refund. The ABA reserves the right to cancel any program, and assumes no responsibility for personal expenses.

HOTEL

The conference will be held at The Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102. Reservations can be made by calling the Hotel Reservation Office at 800-228-3000. To insure availability please make your reservation by December 28, 2009. The Hotel Reservation Office will assign rooms on a space available basis. Hotel check-in time is 3:00 p.m. and the check-out time is 12:00 p.m. Reservations must be cancelled 72 hours prior to the scheduled day of arrival to avoid a one night's cancellation charge. Conference Rates: \$238 s/d.

AIR TRANSPORTATION

Discounted airfares are available for travel to ABA Master Calendar meetings. ABA and Orbitz negotiated airfare discounts and web only fares are available to members at ABA Online Travel. Visit www.abanet.org and select ABA Online Travel under the ABA Calendar. Airfare discounts are available to all meeting attendees by calling the ABA's travel agency, Orbitz for Business, toll-free at (877) 222-4185.

CLE CREDIT

Accreditation has been requested for the conference from every state with mandatory continuing legal education (MCLE) requirements for its lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE". Check your state agency for confirmation of this program's approval. Attorneys seeking to obtain MCLE credit in Louisiana and Pennsylvania are required to pay state accreditation fees directly to that state. Certificates of attendance will be available at the conclusion of this conference. For questions pertaining to the number of credit hours granted by each state, call (312) 988-5678 2 to 3 weeks before the conference.

MEMBERSHIP

As an added bonus to new members, the member's tuition rate will be available to registrants who become members of the Forum or TIPS on or before the first day of the program. For your convenience, a Forum membership form is included in the brochure. Membership dues are not deductible as charitable contributions for federal income tax purposes. However, such dues may be deductible as a business expense.

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. 1.162-5) (Coughlin vs. Commissioner 203 F 2d 307).

COURSE MATERIALS

If you are not planning to attend the program and wish to order the course materials, check the appropriate box on the registration form and send it with the appropriate fees. Allow approximately 3-4 weeks after the program for delivery.

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required for an individual with a disability to attend this program, please submit your request in writing to Mark Nagasawa, American Bar Association, 321 North Clark Street, Chicago, IL 60654, or Fax to (312) 988-5677, no later than DECEMBER 28, 2009.

FORUM ON THE CONSTRUCTION INDUSTRY WEBSITE

www.abanet.org/forums/construction/home.html

CELL PHONE POLICY

As a courtesy to speakers and attendees, we request that all cell phones and pagers be turned off in the meeting rooms.

For a brochure on the 2010 ABA Tort and Insurance Practice Section, Fidelity & Surety Law Committee Midwinter Meeting, Friday, January 29, 2010, call (312) 988-5672 or visit www.abanet.org/tips.

Registration Form (Please print or type)

1. REGISTRANT INFORMATION:

Last Name First Name M.I.

(Name as you wish it to appear on name badge) ABA Member ID#

Firm/Company/Agency

Address

City State Zip

(Area Code) Business Phone Number (Area Code) Business Fax Number

E-mail Address

Spouse or Guest (Print as you wish names to appear on badge)

I am a New Member I am a First Time Attendee

2. REGISTRATION FEES:

You may use this form to register for the Forum on the Construction Industry/TIPS Joint Meeting as well as the ABA TIPS FSLC Midyear Meeting.

Thursday, January 28, 2010

A. The Forum on the Construction Industry 2010 Midwinter Meeting (Co-sponsored by TIPS FSLC and Section of Public Contract Law)

ON OR BEFORE 1/15/10 AFTER 1/15/10

<input type="checkbox"/> General Attendees	\$550	\$600
<input type="checkbox"/> Forum Members	\$450	\$500
<input type="checkbox"/> TIPS Members	\$450	\$500
<input type="checkbox"/> Public Contract Law Members	\$450	\$500
<input type="checkbox"/> Government/Academic/YLD	\$320	\$370
<input type="checkbox"/> Law Students	\$225	\$275

Insurance Company Employees:

<input type="checkbox"/> Non-TIPS members	\$290	\$315
<input type="checkbox"/> TIPS members	\$250	\$315

Subtotal 2a \$ _____ \$ _____

Friday, January 29, 2010

B. ABA TIPS Fidelity & Surety Law Committee 2010 Annual CLE Midwinter Meeting

ON OR BEFORE 1/15/10 AFTER 1/15/10

<input type="checkbox"/> General Attendees	\$550	\$600
<input type="checkbox"/> Forum Members	\$450	\$500
<input type="checkbox"/> TIPS Members	\$450	\$500
<input type="checkbox"/> Public Contract Law Members	\$450	\$500
<input type="checkbox"/> Government/Academic/YLD	\$320	\$370
<input type="checkbox"/> Law Students	\$150	\$175

Insurance Company Employees:

<input type="checkbox"/> Non-TIPS members	\$225	\$250
<input type="checkbox"/> TIPS members	\$150	\$175

Subtotal 2b \$ _____ \$ _____

3. SOCIAL EVENT TICKETS:

Event	Fee	Qty	Total
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1/28/10

Thursday Luncheon	Incl.	_____	\$ _____
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Spouse/Guest Ticket	\$80	_____	\$ _____
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****YOU MUST SIGN UP FOR LUNCH TO ATTEND****

1/28/10

TIPS FSLC Welcome Reception (Included in Friday's registration)

Spouse/Guest Ticket	\$75 (\$80*)	_____	\$ _____
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(*at the door)

1/29/10

Friday Luncheon	Incl.	_____	\$ _____
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"The Diversity Factor: Capturing the Competitive Advantage"			
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Spouse/Guest Ticket	\$80	_____	\$ _____
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On-site registrants for Friday's program must pay the program fee plus an additional \$25

Women's Networking Breakfast (Included in Friday's registration)	_____	\$ _____
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Spouse Event (Included in Friday's registration)	_____	\$ _____
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****YOU MUST SIGN UP FOR LUNCH TO ATTEND****

Subtotal 3 \$ _____

4. MATERIALS ONLY:

I will not be attending the seminars and wish to order program materials for:

<input type="checkbox"/> The Forum on the Construction Industry/ TIPS FSLC Joint 2010 Meeting	\$150
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Subtotal 4 \$ _____

5. TOTAL PAYMENT:

Total (Add subtotals 2a, 2b, & 3 or 4): \$ _____

6. PAYMENT INFORMATION:

Check (made payable to ABA)
 Season Pass Voucher
 MasterCard American Express VISA

Credit Card Number Expiration Date

Signature

7. MEMBERSHIP APPLICATIONS:

Please enroll me as a member of the Forum on the Construction Industry. Membership fee (\$50 Regular/\$5 Law Student). I understand I must be a member of the ABA and at least one Section. I belong to the following Section(s):

I am a member of the ABA and wish to join the Tort Trial & Insurance Practice Section. I have enclosed a separate check for \$50 made payable to the American Bar Association.

8. THREE WAYS TO REGISTER:

Online:
www.abanet.org/forums/construction/home.html

Mail:
FORUM ON THE CONSTRUCTION INDUSTRY
321 North Clark Street, Chicago, IL 60654

Fax:
(312) 988-5677
Attention: Mark Nagasawa



American Bar Association

Forum On The Construction Industry, MS 18.2

321 North Clark Street

Chicago, IL 60654

[PRESORTED]
First Class Mail
US Postage
Paid
American Bar
Association



SAVE THE DATE!
Forum on the Construction Industry
2010 ANNUAL MEETING

April 22-24, 2010

Austin, TX, Hilton Austin Hotel