2016 ANNUAL MEETING
ELEBRATING FORUM'S 40 YEARS
APRIL 28-30, 2016 NASHVILLE OMNI NASHVILLE, TN

ABA FORUM ON CONSTRUCTION LAW
BUILDING THE BEST CONSTRUCTION LAWYERS



DEAR COLLEAGUES:

2016 marks the 40th anniversary of the ABA Forum on Construction Law and we welcome you to Nashville, TN — Music City USA, to celebrate this milestone! The festive, growing city of Nashville, home to the Grand Ole Opry and the Country Music Hall of Fame, is the perfect place to mark this incredible occasion.

Throughout the past 40 years, the Forum has prided itself on building the best construction lawyers in the industry. This has been achieved by providing outstanding seminars, excellent books and periodicals and cutting-edge leadership on legal issues affecting the construction industry. We can think of no better way to commemorate the Forum's 40th anniversary than by highlighting its wealth of knowledge and rich history.

Since we are in the Music City, we assembled a program of the Forum's "Greatest Hits." The meeting will welcome back many of our most popular past programs and presenters to reprise their presentations with new and interesting updates. These include the Ethics of Social Media, Risk Management and Insurance Coverage Issues, Payment-Related Provisions, the Inside/Outside Counsel Relationship, an Analysis of the AIA A201General Conditions and Defective Work, Effective Litigation.

We also added some "bonus tracks" — programs that have not yet been seen before, but that honor the top-notch programming for which the Forum is known. The program will kick off with a session examining the development of construction law over the past 40 years from some of the Forum's leaders who have been a part of its evolution.

Of course, no trip to Nashville is complete without music. To that end, we have planned a Thursday night "block party" that is sure to be a crowd pleaser. We also hope you join us for a Friday afternoon tour of the Country Music Hall of Fame, and that you will take the opportunity to enjoy Nashville's wealth of live music venues.

The 2016 Annual Meeting presents a unique opportunity to travel down memory lane with the best of the Forum's past programs and presenters. We look forward to seeing you in Nashville!

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PROGRAM SCHEDULE

WEDNESDAY, APRIL 27, 2016

12:00 P.M. — 5:00 P.M.	Advanced Registration Young Lawyers Construction Practicum – Advocacy at Deposition		
2:00 P.M. — 5:00 P.M.			
3:00 P.M. – 5:00 P.M.	On Site Registration Open		
5:00 P.M 7:00 P.M.	First Time Attendee & New Member Reception		



THURSDAY, APRIL 28, 2016

7:30 A.M. - 5:00 P.M.

Registration & Exhibit Hall Open

7:30 A.M. - 8:30 A.M.

Continental Breakfast

PLENARY 1 8:30 A.M. - 9:30 A.M.

Opening Track:

A History of the Forum and Construction Law

Take a walk through the past 40 years of construction law and the Forum. Presented by some of the Forum's most distinguished members who have worked to advance the areas of project delivery, standard-form contracts, and dispute resolution, Plenary 1 will showcase the Forum's role in building construction law into a primary practice area and the Forum into the most preeminent group of construction lawyers in the world.

Christopher L. Noble

Noble, Wickersham & Heart LLP | Cambridge, MA

James J. Scott

CRB Engineers | St. Louis, MO

9:30 A.M. - 9:45 A.M.

Welcome from the Chair and Opening Remarks

PLENARY 2

9:45 A.M. - 10:45 A.M.

Payment-Related Agreements ... and Wagner

Identifying the Forum's Greatest Hits was as difficult as choosing from among German composer Richard Wagner's most remarkable music. Clearly this program, which combines Wagner's famous compositions with some of the most important construction law documents, was among the elite. This presentation on change orders, lien releases, and other payment-related agreements is in a class by itself.

Eric A. Berg

Ogletree Deakins, Nash, Smoak & Stewart, P.C. | Chicago, IL

Gregory L. Cashion

Smith Cashion & Orr, PLC | Nashville, TN

10:45 A.M. - 11:00 A.M.

Networking Break



PLENARY 3

11:00 A.M. - 12:00 P.M.

Building Utopia: Best Practices in Construction Risk Management

What are the risks before and during the course of a construction project? Can these risks be avoided or at least mitigated? This panel will identify major sources of construction risks and discuss how best to manage them.

Jenny Wheatley Fletcher

Sutherland Asbill & Brennan | Atlanta, GA

Michael D. Hastings

MD Hastings LLC | Atlanta, GA

Leslie King O'Neal

Brasfield & Gorrie, General Contractors | Winter Park, FL

12:00 P.M. - 1:30 P.M.

Forum Annual Business Meeting and Luncheon -**Elections and Awards**

1:30 P.M. - 1:45 P.M.

Networking Break

PLENARY 4

1:45 P.M. - 2:45 P.M.

The Forum Speaks: Tips and Trends For Managing Your **Construction Law Practice**

This program will present the results of a Forum member survey along with commentary on those results by a nationally recognized legal consultant. The survey will be carefully prepared and present questions related to the evolution of the practice of construction law, the perceived threats and opportunities to our profession, and the future of construction law in the U.S. and abroad.

Thomas S. Clay

Altman Weil | Newtown Square, PA

A. Elizabeth (Lizz) Patrick

Patrick Law Group | Atlanta, GA

2:45 P.M. - 3:00 P.M.

Networking Break

PLENARY 5 3:00 P.M. - 4:00 P.M.

Are Arbitrators and Jurors Really That Different?

Every construction trial lawyer thinks they know the differences between the way arbitrators and jurors decide cases. But what does the data show? And have you ever compared the juror's reasoning against the arbitrator's as they deliberated over the same case with the same facts? This session presents the current research from the law and social sciences regarding the similarities and differences between arbitrators and jurors and highlights a study that analyzed arbitrator and juror decision making on the same case. Combined with insights from an arbitrator, construction trial lawyers will learn techniques for more effective persuasion of arbitrators and jurors.

John P. Madden

Madden Mediation & Arbitration LLC | New York, NY/ Dublin, Ireland

Shelley C. Spiecker, PhD.

Persuasion Strategies | Denver, CO

PROGRAM SCHEDULE

PLENARY 6

4:00 P.M. - 5:00 P.M.

Best Practices of the Inside/Outside Counsel Relationship

With an outside counsel acting as the moderator, three General Counsels will explore their respective views on the best practices for managing outside counsel, including selection of outside counsel; creative and alternative billing arrangements; quality control; written opinions of counsel and other reporting requirements; and panel counsel selected by the insurance carrier.

Robert Preston Brown

McKenney's, Inc. | Atlanta, GA

Jody K. Debs

HDR, Inc. | Denver, CO

Charles F. Mitchell

The Kirlin Group | Rockville, MD

Robert S. Peckar (Moderator)

Peckar & Abramson | New York, NY

6:00 P.M. - 8:00 P.M.

Welcome Reception

5th Street Block Party





FRIDAY, APRIL 29, 2016

7:30 A.M. - 12:00 P.M.

Registration & Exhibit Hall Open

8:00 A.M. - 9:00 A.M.

Division Breakfasts

8:00 A.M. - 9:00 A.M.

Continental Breakfast

PLENARY 7

9:15 A.M. — 10:15 A.M.

The Social Media Thicket:

Why Should There Be Any Ethical Issues?

No construction lawyer can afford to ignore social media; however, social media usage raises a host of ethical issues, ranging from judges "friending" lawyers (and vice-versa) to investigating witnesses and jurors to improper "advertising" to unlawful practice to unauthorized multi-state practice to the First Amendment rights of lawyers to screening of employees and law firm policies for employees' use of social-media. Nationally-known speaker Michael H. Rubin will address all of these issues with his unique blend of humor and scholarship, plus one of the most unusual and entertaining multi-media presentations you'll ever see.

Michael H. Rubin

McGlinchey Stafford | Baton Rouge, LA



10:15 A.M. - 10:30 A.M.

Daily Announcements and Networking Break

WORKSHOP A

10:30 A.M. - 11:30 A.M.

When Reasonable People Differ: Keeping the Project On Track When a dispute arises on a project, the typical approach is for the parties to reserve their respective rights and delay resolution of their differences until the end of the project. Unfortunately, this approach creates an adversarial relationship between project participants and often results in a very expensive claims process that can last for years after project completion. This session will address the use of project mediators, dispute resolution boards and other processes available to promote the "real-time" resolution of disputes as they arise on a project.

Ava J. Abramowitz

Leesburg, VA

Steven D. Nelson (Moderator)

SureTec Insurance Company | Austin, TX

John V. Snyder

Bechtel Corporation | Frederick, MD

WORKSHOP B

10:30 A.M. - 11:30 A.M.

"Cost of the Work": Tricks and Traps To Avoid In **Contract Drafting**

What did the downturn teach us about the manner in which reimbursable costs and general conditions expenses can be claimed and defined? This mock negotiation will address the inclusion or exclusion of various items as costs reimbursable to the contractor including which elements of "general conditions" costs should be included or treated as part of overhead or fee. Our speakers will also discuss the "cost of the work" as that term is addressed in industry forms and recent case law decisions.

John Heuer, Jr.

Balfour Beatty Construction | Charlotte, NC

Anna H. Oshiro

Damon Key Leong Kupchak Hastert | Honolulu, HI

WORKSHOP C

11:45 A.M. - 12:45 P.M.

Best Value In Action

With the increase in "at risk" construction management and P3 projects, the use of "Best Value" procurement has emerged in popularity since this program first aired in 2003. How have best value selection techniques been used over the last 13 years? What do we now know to be the strengths, weaknesses, and risks of best value procurement? What are the practical legal issues facing owners, construction and design firms when using or participating in a Best Value procurement?

Julia M.I. Holden-Davis

Garvey Schubert Barer | Anchorage, AK

Timothy R. Thornton

Greensfelder | St. Louis, MO

PROGRAM SCHEDULE

WORKSHOP D

11:45 A.M. - 12:45 P.M.

The Construction Defect Case: Litigating the Defect Or Litigating the Coverage?

In 2009, this panel predicted that the ability to obtain insurance coverage for construction defect claims was going to be a hot and divisive issue across the United States ... and they were right. Hundreds of decisions have been issued addressing whether construction defect claims constitute an accidental "occurrence" within the meaning of the commercial liability insurance policy, and hundreds more have been issued addressing the nature and scope of the various policy exclusions that apply to these kinds of claims. Also as predicted, there is a lot of disagreement among the courts. This panel will bring you up to date on where the law is today, and how you can best position your client with respect to the coverage issues to improve the chances of resolving their claim.

Paul A. Sandars III

Lum, Drasco & Positan | Roseland, NJ

Clifford J. Shapiro

Barnes & Thornburg LLP | Chicago, IL

Patrick J. Wielinski

Cokinos, Bosien and Young | Irving, Texas

4:30 P.M. - 6:00 P.M.

Women's Networking Reception

SATURDAY, APRIL 30, 2016

7:30 A.M. - 12:00 P.M.

Registration & Exhibit Hall Open

8:00 A.M. - 9:00 A.M.

Diversity Breakfast

ABA President Paulette Brown Locke Lord LLP | Morristown, NJ

8:00 A.M. - 9:00 A.M.

Continental Breakfast

PLENARY 8 9:15 A.M. - 10:15 A.M.

Noticeably Older, Arguably Wiser and Still in Need of Work: An A201 Analysis

More than just a commentary on its presenters, this session scrutinizes key provisions of the AIA A201 Standard General Conditions from the competing perspective of both the contractor and owner.

Lynn R. Axelroth (Moderator)

Ballard Spahr LLP | Philadelphia, PA

Ty D. Laurie

Laurie & Brennan, LLP | Chicago, IL

James Duffy O'Connor

Maslon | Minneapolis, MN



10:15 A.M. - 10:30 A.M.

Daily Announcements and Networking Break

PLENARY 9 10:30 A.M. - 11:30 A.M.

Broken Sticks and Bricks: An Overview of Common Causes of **Design Flaws and Construction Defect Claims**

Construction defects are a prevalent part of construction law, but what particular design and construction defects are most likely to arise? This program will pull back the stucco on what design and construction techniques cause the most likely construction defects and arm the defects lawyer with practical strategies for resolving these issues.

Deborah Cazan

Alston & Bird | Atlanta, GA

Ian R. Chin

Wiss, Janney, Elstner Associates, Inc. | Chicago, IL

11:30 A.M. - 11:45 A.M.

Networking Break

PLENARY 10 11:45 A.M. - 12:45 P.M.

The Forum's 40 years of success is built in no small part on its membership and shared experiences. In that spirit, and with a nod to Nashville's singer/songwriter history, your Forum peers will take the stage and the microphone to share a personal experience from a unique perspective.

R. Thomas Dunn

Pierce Atwood LLP | Providence, RI

Asha Echeverria

Bernstein Shur | Portland, ME

Karen Erger

Lockton Companies | Kansas City, MO

Claramargaret H. Groover

Becker & Poliakoff | Maitland, FL

Shiva S. Hamidinia

Briglia McLaughlin | Vienna, VA

Christopher D. Montez

Thomas, Feldman & Wilshusen, LLP | Dallas, TX

12:45 P.M. - 1:00 P.M.

Closing Comments & Adjournment













YOUNG LAWYER PRACTICUM

WEDNESDAY, APRIL 27, 2016

2:00 P.M. - 5:00 P.M.

YOUNG LAWYERS CONSTRUCTION PRACTICUM - Advocacy at Deposition

Many construction cases are either won or lost during the deposition phase of discovery. Depositions provide an opportunity to not only learn about your opponent's case, but also to establish the key facts you will need for dispositive motions and/or trial and to evaluate your clients and opponents testimonial demeanor. Please join us for a practicum with a team of nationally-recognized construction attorneys who will discuss the art of advocacy when taking and defending discovery depositions.

Topics will include:

- Preparing your client for deposition.
- Preparing to take the deposition of an adverse witness.
- "The Deposition Dance" how to avoid using your outline as a crutch so you get what you need from a witness.
- Taking and defending Rule 30(b)(6) depositions.
- The ethical and legal boundaries relating to defending depositions.
- Special considerations for expert depositions.
- Closing the loop What to do after the deposition has been concluded.

Speakers:

Leadership Circle: John Vento, Trenam Law, Tampa, Florida

Division 1: Rob Ruesch, Pierce Attwood, Portland, Maine

YLD: Tamara Lindsay, Coates Rose, New Orleans, LA

Presented By: Division 1 – Litigation and Dispute Resolution; Young Lawyers Division;

and the Forum Leadership Circle.



SPECIAL EVENTS

FIRST TIME ATTENDEE & NEW MEMBER RECEPTION

5:00 P.M. - 7:00 P.M. Wednesday, April 27, 2016

This reception welcomes those attending their first Forum meeting, and welcomes back any who are attending for the first time in five or more years. Come enjoy a happy hour with other first-timers and meet the leadership of the Forum and our valued exhibitors.

WELCOME RECEPTION

6:00 P.M. - 8:00 P.M. Thursday, April 28, 2016 Bring your spouse or guest and gather with friends and colleagues for live music, drinks and heavy hors d'oeuvres on 5th Street outside the Omni for the social highlight of the meeting and a celebration of the Forum's 40th Anniversary. Note: One reception ticket is included in each meeting registration. Guest tickets may be purchased at the time of registration.

DIVISION BREAKFASTS

8:00 A.M. - 9:00 A.M. Friday, April 29, 2016 For those new to the Forum, the Division breakfast is a welcoming way to meet other Forum members who share practices and interests. Forum veterans look forward to seeing old and new Division friends and listening to unique programs specially tailored to the interests of the Division members.

WOMEN'S RECEPTION

4:30 P.M. - 6:00 P.M. Friday, April 29, 2016 Network, enjoy cocktails and socialize with many of the best-known women in construction law. This reception is a great opportunity to meet colleagues and talk about how we got here, where we are, and what the future holds for women in the profession.

COUNTRY MUSIC HALL OF FAME TOUR

2:00 P.M. - 4:30 P.M. Friday, April 29, 2016

Even if you don't know Dolly Parton from Patsy Cline, this Nashville landmark is worth seeing. From legends Elvis, Johnny Cash, and Bob Dylan (who recorded some of his most memorable songs in Nashville), to legends-in-the-making Taylor Swift and Keith Urban, the Hall of Fame showcases some of the most interesting and unique memorabilia in music. Cap off your tour with a "behind the scenes" visit to Nashville's iconic concert poster printers – Hatch Show Prints. Additional registration fee of \$25/person.

SPECIAL EVENTS

DIVERSITY BREAKFAST

8:00 A.M. — 9:00 A.M. Saturday, April 30, 2016

ABA PRESIDENT PAULETTE BROWN

Paulette Brown's biography will humble even the most successful lawyer. Currently ABA President, Ms. Brown has served as in-house counsel to several Fortune 500 firms, has been a municipal court judge, is routinely listed as a top lawyer in labor and employment and commercial litigation and has been named by the National Law Journal as one of "The 50 Most Influential Minority Lawyers in America" and by the New Jersey Law Journal as one of the "prominent women and minority attorneys in the State of New Jersey." Ms. Brown brings her unique perspective to share how the ABA can help Forum members succeed at an elite level.

GOLFERS

Although no formal golf outing has been scheduled in conjunction with this meeting, many Forum regulars will take advantage of the opportunity for some golf at the many outstanding courses in the Nashville area during the week of the meeting. Please contact Frank Elmore, felmore@elmoregoldsmith.com if you would like more information about these informally arranged tee times.

Additional information about these programs can be found on the Forum's website: ambar.org/constructionlaw

SOCIAL MEDIA



https://www.linkedin.com/groups/1908593



www.twitter.com/abaconstruction



https://www.facebook.com/ABAConstruction



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Download the Forum App today at http://manageapps.net/apps/abafcl for course materials, activities and so much more!

Android: Google Play: "ABA FCL" iPhone: iTunes App Store: "ABA FCL"

CONFERENCE INFORMATION

HOUSING

The conference will be held at the Omni Nashville Hotel. Room rates start at: \$242/night (plus tax). The Forum's room block will close on April 4, 2016 at 5:00pm (CST) or as soon as all rooms in that block are reserved, whichever first occurs. For additional lodging options outside of the host hotel please contact Tamara.Harrington@americanbar.org. Please reference the ABA Forum on Construction Law 2016 Annual Meeting. You must register for the conference prior to making your hotel reservation.

AIR TRAVEL

Airfare and car rental discounts for ABA meetings are available through ABA Orbitz for Business. To book online, go to www.americanbar.org/travel click on the Orbitz for Business logo at the top of the page > read the instructions under the "Travel Paid by Self" box. For assistance with online or offline reservations using the ABA Orbitz for Business website, call toll free 877-222-4185. Additional airline discounts may be available. Visit http://www.americanbar.org/membership/travel_services/air_travel_discounts.html for more information.

PROGRAM REGISTRATION

Online at http://ambar.org/FCL40yrmtg or complete and attached registration form with your payment by April 14, 2016. Registrations will only be accepted when accompanied by a check, Visa, American Express, Discover or MasterCard information. Registrations may be FAXED directly to the ABA at 312-988-5850. Registrations cannot be processed without payment. If you do not receive a written confirmation by April 18, 2016, please call the ABA at 800-285-2221.

ON SITE REGISTRATION

Onsite registration is available for those persons who miss the registration deadline. Please email Tamara. Harrington@americanbar.org 72 hours before the conference to confirm that space is still available.

SCHOLARSHIP

Scholarships may be available for a limited time. For more information email Tamara. Harrington@americanbar.org or call 312-988-5674.

CANCELLATION POLICY

No refunds will be granted for cancellations received after April 14, 2016. To receive a refund, minus a \$50 administrative fee, cancellations must be made IN WRITING and RECEIVED by Tamara.Harrington@americanbar.org.

CLE CREDIT

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify up to 12 CLE credit hours (including 1.0 ethics hours) in 60-minute states, and 14.4 credit hours (including 1.2 ethics hours) in 50-minute states. Young Lawyer practicum expected to qualify up to 3.6 credit hours. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit http://www.americanbar.org/cle/mandatory_cle.html or contact Tamara Harrington at Tamara.Harrington@americanbar.org.

GONFERENCE INFORMATION

MEMBERSHIP

To join the Forum go to ambar.org/constructionlaw.

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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.)

AMERICANS WITH DISABILITIES ACT

If special arrangements are required for disabled individuals to attend this program, please contact the Forum in writing by April 16, 2016 at the American Bar Association, 321 N. Clark Street, Chicago, Illinois, 60654. Fax: 312-988-5677. Email Tamara.Harrington@americanbar.org.

QUESTIONS

If you have questions or require additional conference information, please call 312-988-5674 or email Tamara. Harrington@ americanbar.org.

PROGRAM REGISTRATION



FORUM ON CONSTRUCTION LAW 2016 ANNUAL MEETING

Omni, Nashville, Tennessee, April 28-30, 2016

FOUR WAYS TO REGISTER



6

Online at http://ambar.org/FCL40yrmtg

Fax your form to Attention: Forum on Construction Law at 312-988-5850 Call the American Bar Association **312-285-2221** use meeting code FCL0416



Mail the completed registration form to the American Bar Association, Attention: Service Center - Meeting/Event Registration, FCL0416 321 N. Clark St. - FL 16, Chicago, IL 60654

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PROGRAM EVENTS Wednesday, April 27, 2016 2:00 P.M. – 5:00 P.M. Young Lawyer Practicum (additional fee \$50) 5:00 P.M. – 7:00 P.M.	REGISTRATION CATEGORY	EARLY BIRI before or o March 25, 201	n	REGULAR PRICE	
	Non-ABA Member	□ \$90	0 🗆	\$950	
	ABA Member	\$82	5 🗌	\$875	
First Time Attendee And New Member Reception	Forum Member	□ \$72	5 🗆	\$775	
hursday, April 28, 2016	New Forum Member/FTA/YLD*	\$55	0 🗆	\$600	
5:00 P.M. – 8:00 P.M.	20-Year Forum Member*	\$55	0 🗆	\$600	
Velcome Reception Friday, April 29, 2016	Government/Academic/In-House*	\$50	0 🗆	\$550	
8:00 A.M. – 9:00 A.M. Division Breakfasts 4:30 P.M. – 6:00 P.M. Women's Networking Reception	Law Student	\$5	0 🗆	\$ 65	
	Young Lawyer Practicum	\$5	0 🗆	\$ 50	
	Welcome Reception Guest Ticket	\$ 6	5 🗆	\$ 65	
2:00 P.M. – 4:30 P.M. Country Music Hall Of Fame Tour	Country Music Hall of Fame Tour	\$ 2	5 🗆	\$ 25	
	Materials Only: I will not be attending and wish to order program materials ☐ \$ 15				
additional fee \$25) Saturday, April 30, 2016 B:00 A.M. – 9:00 A.M.	Forum Membership: Enroll me as a member of the forum on Construction Law		_ 	\$60/regular 0/law studen	
Diversity Breakfast ABA President Paulette Brown	* Denotes this rate needs a registration discount code. Please contact Tamara.Harrington@americanbar.org for more information.				
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PRESORTED

FORUM ON CONSTRUCTION LAW

Save the date for Future Programs

2016 FALL MEETING

October 6-7, 2016

Chicago, IL

2016 FALL REGIONAL MEETING

November 4, 2016

Atlanta, GA Chicago, IL New York City, NY San Francisco, CA 2017 MIDWINTER MEETING

February 2-3, 2017

Palm Desert, CA