

AMERICAN COLLEGE OF CONSTRUCTION LAWYERS
27TH ANNUAL CONFERENCE

FEBRUARY 18-21, 2016
MONTAGE LAGUNA BEACH
LAGUNA BEACH, CALIFORNIA





THURSDAY, FEBRUARY 18, 2016

2:00 p.m. – 6:00 p.m.

Registration Desk Open

3:30 p.m. – 4:00 p.m.

ACCL Executive Committee Meeting

4:00 p.m. – 5:00 p.m.

ACCL Board of Governors Meeting

4:30 p.m. – 6:30 p.m.

Welcome Reception: Wine & Cheese (Casual Dress)

6:30 p.m.

Dinner Mixer

Fellows and guests are invited to form your own dinner parties with a restaurant list to be provided in advance. Transportation is on your own. (*New Fellows have an arranged dinner.*)

FRIDAY, FEBRUARY 19, 2016

7:30 a.m. – 5:00 p.m.

Registration Desk Open

7:30 a.m. – 8:30 a.m.

Fellows Breakfast

7:30 a.m. – 8:30 a.m.

New Fellows Orientation Breakfast

7:30 a.m. – 8:30 a.m.

Past Presidents' Breakfast

8:00 a.m. – 3:00 p.m.

Spouse/Guest Activities and Hospitality Suite

The Hospitality Suite will remain open until 3:00 p.m. each day for relaxing and catching up with friends. Breakfast will be served at 8:00 a.m. Introduction of New Fellow Spouses will take place at 8:30 a.m. Join us from 10:00 a.m. – 12:15 p.m. for a Kinney Art Class where you will paint a seascape by the ocean with Marge Kinney, a YouTube artist with 2.9 million minutes of artist views from 94 countries. Take home a finished painting in just two hours. Whether you are a beginner or advanced it is a great memory of your visit. The cost is \$65 per person and is limited to the first 24 registrants. Or, if you are a card player, then come play Bridge from 10:00 a.m. – 12:00 Noon. Depending on registrations, we will either have a basic bridge lesson for beginners or a Play of the Hand lesson for intermediate/advanced. The lesson will be led by a local Certified ACBL Instructor. Cost is \$30 per person. *These are ticketed events. See Spouse/Guest packet for details.*



Activities Coordinator: Wendy Gibson, Charleston, SC

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8:45 a.m. – 9:00 a.m.

Introductory Remarks

Opening remarks, including introduction of new Fellows and Program Chair.

C. Allen Gibson, Jr., ACCL President, Charleston, SC

Anne E. Gorham, Program Chair, Lexington, KY

9:00 a.m. – 10:20 a.m.

PLENARY ONE – Mitigation of Construction

Technology Risks – Cyber Security

What are the new technologies being adopted by the construction industry? What risks do they pose? What steps can a contractor or owner take to mitigate the risks? How do we advise our clients on anticipating and avoiding risks?

Moderator: Gregg E. Bundschuh, Alpharetta, GA

Speakers: Russ Cohen, CISSP, ACE Professional Risk, Philadelphia, PA

Erica Constance, Paragon International Insurance Brokers Ltd., London, England

Paul Doherty, AIA, the digit group, inc., Collierville, TN

Graham Nagus, Paragon International Insurance Brokers Ltd., London, England

10:20 a.m. – 10:40 a.m.

Refreshment Break

10:40 a.m. – 12:00 Noon

PLENARY TWO – P3's Best Practices/Lessons Learned

Experienced P3 participants will share practical tips from lessons learned in the P3 arena. They will also address the competing economic interests of the P3 Project entity/ concessionaire/design builder and the major suppliers or designers: lowest capital cost vs. lowest long term maintenance costs and warranties.

Moderator: Helmut K. Johanssen, Vancouver, BC, Canada

Speakers: Randall F. Hafer, Atlanta, GA

Hannelie E. Stockenstrom, SNC-Lavalin Inc., Vancouver, BC, Canada

Christopher J. White, Peter Kiewit Infrastructure Co., Vancouver, WA

12:00 Noon – 1:15 p.m.

Fellows' Collegial Luncheon On The Lawn

1:30 p.m. – 2:30 p.m.

PLENARY THREE – Jim Nagle on Federal Contracting

Jim Nagle will present his annual "year in review of federal contracts" but in an expanded version that will provide more in-depth analysis of the most recent statutes, regulations and decisions, and how they affect the landscape for contractors doing business with the federal government.

Speaker: James F. Nagle, Seattle, WA

2:30 p.m. – 2:45 p.m.

ACCL Outlook and Upcoming Projects

A. Holt Gwyn, President-Elect, Greensboro, NC

2:45 p.m. – 3:00 p.m.

Break

3:00 p.m. – 4:30 p.m.

COMMITTEE PROGRAMS:

INSURANCE

*Committee Chairs: Lee H. Shidlofsky, Austin, TX
Dean B. Thomson, Minneapolis, MN*

Update of important insurance developments throughout the nation in 2015:

Speaker: Lee H. Shidlofsky, Austin, TX

Choice of law issues in insurance coverage:

Speaker: Dean B. Thomson, Minneapolis, MN

Coverage for contractors regarding claims for professional liability:

Speaker: Keith Jurss, Willis North America, Inc., Chicago, IL

INTERNATIONAL

*Committee Chairs: Duncan W. Glaholt, Toronto, ON, Canada
John B. Tieder, Jr., McLean, VA*

DAB's and Arbitration: Are they Complimentary, Contradictory or Duplicative Methods of Dispute Resolution?

*Speakers: John W. Hinchey, Atlanta, GA
Michael C. Loulakis, Reston, VA
James Perry, PS Consulting, Paris, France*

Public Private Partnerships: Towards a Worldwide Standard: Both the World Bank and the United Nations have been engaged in developing model laws and contract forms that provide standardization to legislation. Marc Frilet will speak on the plans for going forward through an International Center of Excellence created under the aegis of the UN in France.

*Speakers: Marc Frilet, Paris, France
Mark Romoff, The Canadian Council for Public-Private Partnerships, Toronto, ON, Canada*

PUBLIC CONTRACTS

*Committee Chairs: John P. Ahlers, Seattle, WA
Joseph D. West, Washington, DC*

Prime Contractor Certification: This session will address prime contractor certification issues, foreign sourced products and state false claim act issues. The prime contractor certification issue is essentially “the Turner Issue,” and will include discussion of the prime contractor’s obligation to investigate the legitimacy of the subcontractor claims; whether any sort of conditional certification allows the claim to go forward without risking false claim accusations; what recourse a subcontractor has if the prime contractor refuses certification and can any of this be managed through subcontract language?

*Speakers: Danny G. Shaw, Mandeville, LA
Michael I. Less, Memphis, TN*

Foreign Sourced Products: The foreign sourced products issue relates to products that are misrepresented as originating from a US or conforming country.

Speaker: Joseph D. West, Washington, DC

Update on State False Claims Acts:

Speaker: Deborah S. Ballati, San Francisco, CA

4:30 p.m. – 5:30 p.m.

Special Committee & Task Force Meetings:

*ACCL Journal Committee In-House Counsel
Diversity Committee Professors Committee*

6:00 p.m. – 10:00 p.m.

Cocktails, Dinner & Dueling Pianos (Casual Dress)

Don't miss this wonderful night of hors d'oeuvres and cocktails (6:00 p.m. – 6:45 p.m.), buffet dinner (6:45 p.m. – 8:00 p.m.) and dueling pianos (8:00 p.m. – 10:00 p.m.).

SATURDAY, FEBRUARY 20, 2016

7:30 a.m. – 12:30 p.m.

Registration Desk Open

7:30 a.m. – 8:30 a.m.

Fellows Breakfast

7:30 a.m. – 3:00 p.m.

Spouse/Guest Hospitality Room Open

Breakfast will be served at 8:00 a.m. The Hospitality Suite will remain open until 3:00 p.m. Join us from 9:15 a.m. – 10:30 a.m. for a *Thalassic Beach Walk* and discover why scientists have hailed seawater as the “soup of life”. Guests will arrive at the Spa front desk at 9:15 a.m. to grab spa sandals, sunscreen and water (all provided), and then be guided on a path down to the beach to walk barefoot in the ocean and sand at a brisk pace, meditate by the ocean’s edge and learn the benefits of the sea. The fee is \$20 per person. *This is a ticketed event. Advanced registration is required on the conference registration form. See Spouse/Guest packet for details.*

Activities Coordinator: Wendy Gibson, Charleston, SC

7:45 a.m. – 9:15 a.m.

COMMITTEE PROGRAMS:

ALTERNATIVE DISPUTE RESOLUTION

*Committee Chairs: Deborah B. Mastin, Miami, FL
H. Bruce Shreves, New Orleans, LA*

A View from the Tribunal: Advocacy tips and traps in arbitration. Panelists will share enlightening insights about what presentation techniques have worked especially well, and what techniques have been less useful.

Moderator: H. Bruce Shreves, New Orleans, LA

*Speakers: Joseph F. Canterbury, Jr., Dallas, TX
Donald G. Gavin, Vienna, VA
Judith B. Ittig, Washington, DC*

CPR: Deborah B. Mastin, Miami, FL

JAMS: Brian Parmelee, JAMS, Irving, CA

AAA: Michael Powell, AAA, Los Angeles, CA

CONTRACT DOCUMENTS

*Committee Chairs: Peter C. Halls, Minneapolis, MN
Buckner Hinkle, Jr., Lexington, KY*

One-Sided Contracts: Do They Pay-Off? [Or: Do Good Guys Finish First?]: What is the empirical evidence that an unbalanced contract pays off? Do one-sided contracts increase prices or scare away qualified contractors and bidders? Do they sow the seeds for adverse relations on the project and encourages disputes? Could it instead discourage claims because of the risks of being wrong? What makes an effective limitation of liability clause and no damage for delay clause? How do the goals of such clauses survive in states where statutes make bald faced clauses void as against public policy?

*Speakers: Ross J. Altman, Chicago, IL
Jeffrey R. Cruz, New York, NY
Peter C. Halls, Minneapolis, MN*

Routine Clauses and Phrases: Overlook At Your Peril?: Consider contract terms that appear often, don't get much attention in heavy contract negotiations but can cause problems because of lack of specificity or ambiguity: Why are they there, what do they mean, do they get enforced, what are the dangers or benefits? Examples: Time of the essence; risk of loss; best efforts; free from defects; satisfactory; in owner's discretion; most stringent; fault. Add to these the seemingly innocuous Termination for Convenience clause (does it really mean for any reason or are there good faith limits?) and the "right to request a CO" as opposed to "right to change order".

*Speakers: Brian G. Corgan, Atlanta, GA
Mark J. Heley, Minneapolis, MN
Robert J. MacPherson, Newark, NJ*

9:15 a.m. – 9:30 a.m.

Refreshment Break

9:30 a.m. – 10:45 a.m.

PLENARY FOUR – Communications with In-House Counsel: When Are They Privileged?

This session will address:

- In-house challenges of misunderstanding the scope and uses of privilege within the organization.
- Misunderstandings about privilege internationally (or the lack of availability of privilege in European countries).
- The scope of privilege protection for internal investigations.
- Whether there is privilege protection for communications of in-house attorneys functioning in the role of compliance officers.
- What is the scope of privilege protection relating to an in-house attorney's assistance in anticipation of litigation, and how does that scope impact outside counsel?
- Recent caselaw (KBR, etc.).

*Speakers: Paul A. Bruno, Irving, TX
John P. Elwood, Vinson & Elkins LLP,
Washington, DC
Wendy K. Venoit, Boston, MA*

10:45 a.m. – 11:45 a.m.

HOT TIPS / HOT TOPICS

*Committee Chairs: William G. Geisen, Covington, KY
Ty D. Laurie, Chicago, IL*

It's "Back To The Future" with Hot Tips. This session will be an interactive and lively discussion on several hot topics selected by Fellows. Our committee chairs will facilitate the discussion with the audience and carve out time for last minute additional topics raised by the audience.

12:00 Noon

Afternoon Activities Begin

12:00 Noon – 4:00 p.m. (*Buses depart at 12:00 Noon sharp!*)

The "Wild Goose" Harbor Cruise (Ticketed Event)



Your Newport Beach cruise begins and ends with unparalleled service, gorgeous views, delicious food and drinks and a unique venue you just can't find anywhere else.

With the largest recreational harbor on the west coast, Newport Beach Harbor offers extraordinary, million dollar views! You are cruising aboard the infamous Wild Goose. Once the private playground for legendary actor John Wayne, the Wild Goose has been featured on the Discovery Channel and California's Gold with Huell Howser and is now the ultimate venue for unforgettable events. Three decks of gorgeous woodwork, priceless paintings, intricate carvings and unique amenities make a cruise aboard the Wild Goose a one-of-a-kind experience, and it's only available in Newport Beach, CA. \$110 per person (includes round-trip transportation and lunch.) **Buses depart at 12:00 Noon sharp!** *Advanced registration is required on the conference registration form and must be received by February 5, 2016.*



12:30 p.m. – Shotgun Start
Golf Tournament

The golf tournament will be held at the Monarch Beach Golf Links (50 Monarch Beach Resort Drive North, Dana Point, CA 92629) with a shotgun start at 12:30 p.m. Transportation to and from the course is on your own. Please plan to arrive by 12:10 p.m. The fee is \$205 per golfer and includes green fees, cart and prizes. Lunch is on your own. The ACCL Golf Committee will assign players to foursomes and communicate the pairings prior to the event. Fellows, spouses, and guests are welcome to play in this golf tournament. *Please indicate your interest in playing on the conference registration form and include payment with your registration fee.*

Golf Chair: Jotham D. Pierce, Jr., Portland, ME



2:00 p.m.

Tennis Tournament

Join the Fellows, spouses and guests for tennis. This tournament will be held at The Tennis Club at Monarch Beach (33080 Niguel Road, Monarch Beach, CA 92629) beginning at 2:00 p.m. The fee will be \$20 per player. The play will be social, mixed doubles, round robin format using four game sets. After each set, the players will change partners for the next set. Transportation is on your own. *Please indicate your interest in playing on the conference registration form and include payment with your registration fee.*

Tennis Chair: Mark J. Heley, Minneapolis, MN

7:00 p.m. – 8:00 p.m.

Fellows and Guests Reception

(Black Tie Attire)

8:00 p.m. – 10:30 p.m.

Formal Dinner

Recognitions and Awards

C. Allen Gibson, Jr., ACCL President

Formal Introduction of New Fellows

A. Holt Gwyn, ACCL President-Elect

SUNDAY, FEBRUARY 21, 2016

7:30 a.m. – 11:00 a.m.

Registration Desk Open

7:15 a.m. – 9:00 a.m.

Fellows and Spouse/Guest Continental Breakfast

8:00 a.m. – 9:15 a.m.

Practice Transition Committee

“Passages From Practice – The New Norm”

“Transition” is not just retirement in today’s world, and there is not a clear line between law practice and retirement. The Practice Transition Committee will feature five Fellows, who will describe their pursuit of alternative passions, which they have begun well before it is time to take the nameplate off of the door.

John W. Hinchey, Atlanta, GA

Allen L. Overcash, Lincoln, NE

9:30 a.m. – 10:30 a.m.

ACCL Annual Business Meeting

- Election of New Board Members and Officers
- Committee & Task Force Reports
- Remarks by 2016-2017 President Holt Gwyn
- *Adjourn 27th Annual Meeting*

10:45 a.m. – 12:15 p.m.

Board of Governors Meeting



HOTEL INFORMATION

Montage Laguna Beach
30801 South Coast Highway
Laguna Beach, CA 92651
(888) 715-6700

REGISTRATION FORM

ACCL 27TH ANNUAL CONFERENCE

FEBRUARY 18-21, 2016 – LAGUNA BEACH, CALIFORNIA

HOTEL INFORMATION

For the convenience of conference registrants, a block of rooms has been reserved at The Montage Laguna Beach, 30801 South Coast Highway, Laguna Beach, CA 92651. **Please reserve your room by calling the Hotel Reservation Office at (888) 715-6700** and asking for the American College of Construction Lawyers group rate. To ensure availability please make your reservation by **January 24, 2016**. After that date the hotel will assign rooms on a space available basis only. The conference rates are \$345.00 single/double, with a 1-night deposit required at the time of reservation. Please note in the event of room cancellation, the deposit is refundable if notice is received at least 7 days prior to arrival. Cancellation within 7 days will result in the first and last nights' room rates and tax being applied.

CONFERENCE REGISTRATION

Register by mail by sending the completed registration form & payment to: **ACCL 27th Annual Conference**
 Or fax form to: (512) 451-2911 Or register online at www.accl.org **P.O. Box 4646**
Austin, TX 78765



Name: _____

Company/Organization: _____

Address: _____

City: _____ State/Province: _____

Zip/Postal Code: _____ Country: _____

Telephone: _____ Fax: _____ E-mail: _____

Special Dietary Requests: _____

PAYMENT INFORMATION:

Fellows Conference Fee: \$950 \$ _____
 (Does not include accommodations or incidentals. Registrants should pay the hotel directly for these expenses.)

Committee Programs you plan to attend (one per day):

Friday Insurance International Public Contracts *Saturday* ADR Contract Documents

Conference Materials: Conference Materials on USB are included with your conference registration. Some sessions may have hard-copy handouts onsite. The binder of conference materials is also available for purchase for an additional \$50. \$ _____

Spouse/Guest Fee: \$495 Name of Spouse/Guest _____ \$ _____
 (Includes food and beverage for hospitality suite, Friday/Saturday breakfast, and dinner on Friday and Saturday nights.)

- Waitlist for Kinney Art Class: \$65/person (Friday, February 19th) Waitlist Only
- Bridge Class: \$30/person (Friday, February 19th) Please indicate: Beginner Int./Advanced ... \$ _____
- Beach Walk: \$20/person (Saturday, February 20th) \$ _____

Optional Tour/Events (Pre-Registration Required)

Saturday, February 20, 2016

- Golf fee: \$205/person Name of Golfer _____ \$ _____
 Name of Golfer _____
- Tennis fee: \$20/person Name of Player _____ \$ _____
 Name of Player _____
- Wild Goose Harbor Cruise: \$110 x ____ (no. of tickets) Name _____ \$ _____
 Name _____

Total..... \$ _____

Please make your check payable in U.S. Dollars to "American College of Construction Lawyers"

Please charge my: American Express MasterCard Visa

Credit Card # _____ Expiration Date: _____

3 or 4 Digit Security Code _____ Name on Card (Please Print) _____

Billing Address (including zipcode): _____

Authorized Signature: _____

Fellow's Saturday Dinner Selection

Filet Mignon

Halibut

Vegetarian

Spouse's Saturday Dinner Selection

Filet Mignon

Halibut

Vegetarian

Refunds less a \$50 processing fee will be granted to registrants who cancel on or before 30 days prior to the first day of the meeting. If notice is received after that time and before 7 days prior to the first day of the meeting, refunds will be granted less a \$150 processing fee. No refunds will be granted thereafter.