

Claims and change orders are still the biggest drivers of cost overruns and behind-schedule performance — but it doesn't have to be that way...

# On-Demand Course on Management of Construction Claims & Change Orders

Available exclusively on a DVD or a USB drive!

## CONTRACTORS –

educate your project staff about the role of change management in protecting your profit



## OWNERS –

learn how proactive change management can minimize contract price growth and delayed completion.



### Who Will Benefit?

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- A/Es
- Contractors
- Construction Managers
- Contract Administrators
- Owner Representatives

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Entire Team**

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- PPT Slides for Each Session
- 16 90-minute Webinar Sessions
- Free “*Construction Contract Claims, Changes & Dispute Resolution*” book

Published by ASCE Press - this 500+ page hard copy book regularly sells for \$100

### Why This Course?

- Understand how to identify changes and the importance of notification and documentation
- Learn the intricacies of contract interpretation, differing site conditions and impacts on unchanged work
- Gain an understanding of what causes delay, disruption and impact — what's compensable and what's not
- Know the fine line between mitigation and compensable acceleration — mitigation of delay is imperative
- Find out how to uncover the root causes of lost productivity and show entitlement and quantum
- Uncover best practices for pricing claims
- Learn essential claims presentation and defense techniques, and the importance of the negotiation process
- Evaluate options when agreements cannot be reached
- And much, much more!

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Your Invitation to WPL Publishing Co.'s

# The Essential Course on Management of Construction Claims & Change Orders

Dear Construction Professional:

Construction claims and changes are an inevitable process on a construction project, particularly public construction, infrastructure, heavy, healthcare, energy, transportation, civil and industrial projects. Both owners and contractors are still getting into knots in their approach to managing and controlling claims. Conflicting interests, schedule and budget constraints, the urgency of dealing with day-to-day issues and the varying levels of experience of the project staff leaves open many opportunities for adversarial relationships of the contracting parties.

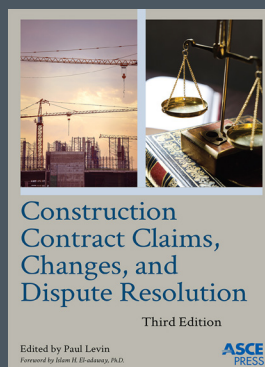
Over the last five years the average value of construction disputes in North America has fluctuated between \$64.5 and \$29.6 million dollars. With the average length of dispute resolution increasing consistently and reaching an average of 14 months. With these numbers in mind, it's clear that preventing disputes will benefit all parties of construction projects.

Train your whole staff with this exclusive recorded training course. Each recorded session includes Q&A period recording, so you won't miss any valuable information. Save travel and hotel expenses and lost work time. All sessions are provided on your choice of DVD or USB drive, you can listen at your convenience. PLUS — your order includes your own copy of the 500-page "*Construction Contract Claims, Changes & Dispute Resolution*" 3rd edition book (a \$100 value!). See next page for a complete list of faculty and details on each session. Online sessions are available individually at \$246 each, but you save over 82% with the special series price of \$695 — making the cost of each session less than \$43!

Make the most of this information-packed training. Let each member of your team learn from the sessions and experts closest to their area of responsibility. One tidbit from one session could save your company tens of thousands of dollars.

Sincerely,

Paul Levin  
Publisher



## Your Expert Faculty:

- **Christopher Anzidei**,  
Law Offices of Christopher Anzidei, PLLC
- **Brian W. Bennett**,  
Bennett Legal Group
- **Chris Brasco**, Watt, Tieder, Hoffar & Fitzgerald, LLC
- **Chris Burke**,  
Varela, Lee, Metz & Guarino, LLP
- **Adam Bult**,  
Brownstein Hyatt Farber Schreck, LLP
- **Kathleen Barnes**,  
Watt, Tieder, Hoffar & Fitzgerald, LLC
- **Richard Burnham**, Consultant
- **Tom Fertitta**, TDF, LLC
- **Robert Freas**, Exponent
- **Jeff Gilmore**, Akerman LLP
- **Rebecca Glos**, Watt, Tieder, Hoffar & Fitzgerald, LLC
- **Wesley Grover**, Exponent
- **Dave Halligan**,  
Navigant Consulting, Inc.
- **Don Harrington**,  
Sage Consulting Group
- **Mike Harris**,  
Secretariat International
- **William Ibbs**, Ibbs Consulting Group Inc.
- **Michelle Kane**,  
Bennett Legal Group
- **Marilyn Klingner**, SMTD Law LLP
- **John Livengood**,  
Navigant Consulting, Inc.
- **Eileen McKillop**, Selman Breitman LLP
- **Joe McManus**,  
McManus & Felsen LLP
- **Brent McSwain**,  
Sage Consulting Group
- **Mark Nagata**, Trauner Consulting
- **Jonathan Pray**,  
Brownstein Hyatt Farber Schreck, LLP
- **Daniel D. Rounds**,  
Smith Pachter McWhorter, PLC
- **Nick Surace**,  
Smith Pachter McWhorter, PLC
- **Rex Snyder**, Sage Consulting Group
- **Paul Stynchcomb**, Ibbs Consulting Group Inc.
- **Scott Turner**, Smith, Currie & Hancock LLP
- **James Zack**,  
Navigant Construction Forum™

P.S. Don't delay – sign up to gain access to the "Construction Contract Claims, Changes & Dispute Resolution" book (a \$100 value).

# Course Overview

Set up a biweekly lunchbox meeting for your staff to participate and learn. One tidbit from one session could save your company tens of thousands of dollars.

## Course Outline

Listen at your convenience!

Session 1	Identification and Notification - Keys to Success	Joe McManus
Session 2	Differing Site Conditions: The Big Game of Shifting Risk	Marilyn Klinger & Eileen McKillop
Session 3	Contract Interpretation: Insight to the Myriad of Causes of Conflict Arising from the Drawings & Specifications	Brian Bennett & Michelle Kane
Session 4	Project Delays and Time Extensions	Tom Fertitta & Jeff Gilmore
Session 5	Acceleration and Mitigation of Project Delays: Analysis, Costs and Owner/Contractor Responsibilities	Chris Burke & Mike Harris
Session 6	Documentation: Best Practices for Identification and Support of Claims	Robert Freas & Wesley Grover
Session 7	CPM Schedule Review and Analysis: The Method of Choice to Support Delays and Time Extensions	John Livengood
Session 8	Lost Productivity Claims: Identification, Measurement and Recovery	Bill Ibbs & Paul Stynchcomb
Session 9	Subcontractors and Suppliers: Special Issues and Concerns	Chris Brasco & Chris Anzidei
Session 10	Pricing: Putting the Dollars on the Damages	Don Harrington, Brent McSwain, Rex Snyder
Session 11	Negotiation of Construction Claims and Change Orders	Kathleen Barnes
Session 12	Alternate Dispute Resolution: Your Key to Staying Out of Court	Adam Bult, Dave Halligan, Jonathan Pray & Jim Zack
Session 13	Termination of Contracts and Subcontracts	Daniel Rounds & Nick Surace
Session 14	Bonds and Liens: Protect and Collect	Rebecca Glos
Session 15	Construction Insurance: Claims of a Different Nature	Scott Turner
Session 16	Alternate Project Delivery Claims for Design-Build, GMP and Other Delivery Methods	Rick Burnham & Mark Nagata

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# Sessions

## Session 1

### Identification and Notification: Keys to Success

■ Presented by **Joe McManus**, McManus & Felsen, LLP

Changes are an inherent part of any construction project. Owner-directed changes are the most frequently encountered ones, with minor changes easily negotiated and incorporated into the project. There are many other changes encountered on a project that are less obvious but can impact the cost and time of performance. The most successful contractors and owners are those that are adept at managing the claims and change-order process and, most importantly, have a firm understanding of the Identification and Notification process. Joe McManus discusses the “hows and whys” of identifying claims and notifying owners of all potential problems. This is one of the most important aspects of contract administration, as proper notification is paramount to avoid losing one’s right to submit a claim as well as to establish the foundation for ultimate proof and recovery. Listen to find out:

- What a claim is and the important elements each claim must have
- Why the change-order clause, the foundation of most change orders, is not always the road to recovery
- How to develop a non-adversarial approach to identification and notification of potential claims
- The prerequisites to identification: contract knowledge and construction law familiarity
- Notice provisions, late notice — how to deal with conflicting contract provision and notice shortcomings

#### YOUR PRESENTER

**Joe McManus** advises clients on construction and commercial issues and disputes. He gained this experience as a construction and public-contracts lawyer since 1972, as lawyer in the US Air Force JAG corps, as general counsel to Clark Enterprises, Inc. (parent of Clark Construction), and as a member of his own firm. He has represented many public owners, including MWAA, the DC Council, the government of Barbados, and the government of Greece. Mr. McManus frequently serves as arbitrator on local, national, and international cases. He is a member of the Large Complex Case Panel of Arbitrators and a mediator (American Arbitration Association). He has appeared as an expert witness in cases involving construction documents, specifically AIA documents, in the United States and in the Caribbean. Mr. McManus is a past President of the American College of Construction Lawyers.

## Session 2

### Differing Site Conditions: The Big Game of Shifting Risk

■ Presented by **Marilyn Klinger**, Sedgwick and **Eileen McKillop**, Selman Breitman LLP

This presentation will examine the various scenarios involving differing site condition claims and how the construction industry deals with those claims, both via contract and in the courts. You will be more prepared to identify those situations where differing site condition claims might arise and understand what the parties’ various rights and remedies might be. This recorded program will help you:

- Understand the kinds of differing site condition claims that are encountered, such as rock or soil conditions, interfering utilities or severe weather conditions
- Distinguish the two types of differing site conditions
- Take advantage of contractual provisions for dealing with differing site conditions
- Understand certain seminal judicial decisions and how they can affect you

#### YOUR PRESENTERS

**Marilyn Klinger** is located in the Los Angeles office of Sedgwick, and is involved in all aspects of construction law on a state and national level. She represents the full spectrum of the construction industry, from owners, contractors, subcontractors, and sureties. Her practice includes time-related claims and litigation (e.g., delay/impact), legal advice and counsel regarding the contracting process (e.g., bidding and contract disputes/performance bond claims), payment enforcement/defense (e.g. payment bonds/mechanic’s liens/ stop payment notices), administrative and scope claims and litigation (e.g., differing site conditions, change and extra work orders/ inadequate plans and specifications, and subcontractor substitutions), and counseling and transactional services to the construction industry (e.g., general advice and counsel, including contract preparation, evaluation, and negotiation).

**Eileen McKillop** is an established litigator with broad experience in managing complex cases, including construction, environmental, products liability, and general civil litigation. She has litigated hundreds of complex civil cases, however, she is also a specialist in helping clients to avoid and resolve disputes on complex cases.

*We are finding the trainings very useful, so thank you for all of the effort that it takes to make them happen.*



# Sessions

## Session 3

### Contract Interpretation — Insight to the Myriad of Causes of Conflict Arising from the Drawings and Specifications

■ Presented by **Brian Bennett & Michelle Kane**, Bennett Legal Group

Contract Interpretation is one of the more interesting subjects in day-to-day project management. Every construction project is a unique design accompanied by a unique set of contract documents. Design is limited—or should we say “unlimited”—only by the imagination of the designer. So it is natural that the development of the specifications and drawings comprising the contract documents will give rise to questions and conflicts. Construction attorney Brian Bennett aptly dives into this fascinating topic, providing examples and methods developed over the years to help the contracting parties interpret contract documents and resolve disputed items. This important session will:

- Introduce you to the rules of contract interpretation
- Examine defective specifications and their implications, including suitability of methods or material, possibility vs. practicality, cardinal changes and failure to disclose knowledge
- Help you understand the duty to seek clarification and the “zone of reasonableness” in determining the confidence level of your interpretation of contract clauses and drawings
- Review other duties and obligations of both the contractor and owner

#### YOUR PRESENTERS

**Brian W. Bennett** is a partner with the firm of Bennett Legal Group. He is Florida Bar Board Certified in Construction Law and has represented various participants in the construction process, including owners, general contractors, design professionals, and major subcontractors. He had several years of practical experience in civil engineering and general construction prior to attending law school. Brian's civil engineering experience includes the design of sanitary sewer, water distribution, and storm drainage systems for various residential and commercial developments.

**Michelle Kane** is an associate with the firm of Bennett Legal Group. She has a strong track record and deep legal expertise in the construction industry. Michelle has direct experience in building and construction industry that she received prior to earning her law degree, so the insider knowledge makes her a valuable partner. Michelle practices construction and civil litigation, commercial and contractual disputes, bonds and liens and professional licensing claims.

## Session 4

### Project Delays and Time Extensions

■ Presented by **Jeff Gilmore**, Akerman LLP and **Tom Fertitta**, TDF, LLC

“Delay,” the five-letter word that is anathema to contractors and owners alike, is much a fact of life in today's large, complex, multi-year projects. Attorney Jeff Gilmore and consultant Tom Fertitta cover the topic from A-Z, including typical causes, types and outcomes of most delay situations. Listen to Jeff and Tom to get dialed into the intricacies of delay presentations, support, analysis and defense, including:

- Typical causes of project delays
- The types of delays and their importance—excusable, non-excusable, compensable and non-compensable
- Concurrent, pacing and other delay types that affect delay cost and time recovery
- Time extensions, liquidated damages, delay and disruption costs
- Dealing with no-damage-for-delay clauses
- Proof of delay and remedies

#### YOUR PRESENTERS

**Thomas D. Fertitta**, PSP, has held leadership positions with a general contractor, a real estate developer and an international professional services firm. Mr. Fertitta has prepared a variety of construction claims and schedules for owners and contractors on private and municipal projects such as schools, office buildings, co-generation plants, industrial facilities, condominiums, wastewater treatment plants, prisons and courthouses. He has performed schedule analyses demonstrating delay, disruption and acceleration, as well as performing damage and loss-of-productivity calculations, as-built construction schedules, issue and entitlement identification and analysis, and document control and organization.

**Jeffrey G. Gilmore** is the chair of Akerman's Construction Practice. His practice emphasizes domestic and international construction law involving a broad range of public and private matters, including EPC/design-build projects, healthcare, multi-family housing, power generation, petrochemical, and infrastructure projects (transportation, water, and public safety). In addition, he has been recognized for his experience in construction matters in Chambers USA; The Legal 500, recommended in the Southeast for Construction; The Best Lawyers in America for Construction Law; and the Virginia Business Legal Elite in the Construction category.

# Sessions

## Session 5

### Acceleration and Mitigation of Project Delays: Analysis, Costs and Owner/Contractor Responsibilities

■ Presented by **Chris Burke**, Varela, Lee, Metz & Guarino, LLP and **Mike Harris**, Secretariat International

The need for acceleration often follows as a result of delays. Similarly, the responsibility for acceleration and its costs will follow suit. But before attention and energy is expended on acceleration, both parties have a duty to mitigate delays. Attorney Chris Burke and construction consultant Michael Harris team up to explain the often-overlooked concept of mitigating delays, which the contractor is obligated to do notwithstanding the causes. The fine line between mitigation and acceleration is explained, along with the various types of acceleration, plus the necessary documentation and proof to support and price an acceleration claim. This on-demand session will help you:

- Understand what mitigation obligation entails and the treatment of mitigation expenses
- Learn the three types of acceleration and why they are relevant
- Discover what a recovery schedule is, how to develop one and its role in the delay-acceleration tandem
- Evaluate impact costs—stacking, overtime, quality, rework, waste and inefficiency—and know who should pay for the acceleration

#### YOUR PRESENTERS

**Christopher M. Burke** is well-versed on the crucial elements of construction disputes, including schedule analysis, lost productivity studies and issues of design interpretation. Chris is particularly knowledgeable regarding claim pricing and damages. Chris is also experienced in the representation of sureties and their unique claims and defenses in construction disputes. Chris has represented clients in state and federal courts and in alternative dispute resolution proceedings, and has considerable experience with international dispute resolution. Over the course of his career, Chris has represented general contractors, construction managers, sureties, and subcontractors through the various stages of dispute resolution, from claim preservation through trial.

**Michael J. Harris**, PE, Esq., is a licensed professional engineer and attorney with over 30 years of construction industry experience including the last 16 years specializing in construction delay and disruption, loss of efficiency, acceleration and termination disputes. He has prepared detailed master schedules, reviewed technical submittals, developed cost estimates and performed constructability.

## Session 6

### Documentation: Best Practices for Identification and Support of Claims

■ Presented by **Robert Freas & Wesley Grover**, Exponent

Records and documentation play one of the most significant roles in the successful settlement of contract claims. The daily events and details of the job should be documented to adequately substantiate claims and prove damages. This recorded program will:

- Identify types of records to keep and what they should say and not say
- Review various types of cost records and the necessity of accurate job data in pricing changes
- Show the importance of document logs for support of individual claims and the claims-management process
- Help you support potential inefficiency claims with production reports
- Discuss best practices and forms for change-order requests, record keeping and proposals

#### YOUR PRESENTERS

**Robert M. Freas**, a principal at Exponent, advises clients on a range of topics including risk management, project controls, change management, project scheduling, process improvement, change order negotiations, dispute avoidance, and the preparation or defense of construction claims. Mr. Freas has provided risk analysis services to construction owners and contractors including contract risk assessments, probabilistic scheduling, Monte Carlo simulations, and schedule and cost assessments. He also has provided project management oversight and construction management services, developed project control systems, and prepared project status reviews.

**Wesley Grover**, PE, a senior manager at Exponent, has over 26 years of experience in analyzing and preparing claims relating to construction matters (e.g., identification and quantification of impact events; effect of change orders, design changes and out of sequence work; and impact of quantity changes and unit price changes), government contracts, business interruption, lost profits, valuation and environmental matters, as well as management consulting services. Mr. Grover has also testified as an expert witness concerning economic damages related to construction, operating and maintenance costs, business interruption, business valuation, lost profits, repair and restoration costs, betterment, employment wage and discrimination costs, as well as trade secret related matters.

# Sessions

## Session 7

### CPM Schedule Review and Analysis—The Method of Choice to Support Delays and Time Extensions

■ Presented by **John Livengood**, Navigant Consulting, Inc.

The proof for damages and time recovery of project delays and impact relies almost exclusively on the use of CPM schedules to show both the causes and extent of the delays incurred. Years of case decisions and industry dialogue have resulted in a number of best practices and approaches, both in the use of schedules during the job and for subsequent use in delay-claim support. Consultant, expert and attorney John Livengood explains the various considerations for use of CPM schedules during the course of a project and in the preparation of a delay analysis. Listen to this presentation to:

- Understand how a CPM is used on a project and its suitability for delay analysis
- Identify pitfalls to avoid and other factors in choosing a method
- Learn about baselines and other steps necessary in preparation for CPM analysis
- Review considerations of float, early completion and acceleration

#### YOUR PRESENTER

**John Livengood** is a managing director in the Global Construction Practice of Navigant Consulting, Inc. John has more than 37 years of experience in construction, design, delay analysis and litigation support. He is a registered architect and attorney, with proficiency in architectural design, construction, project management, government contracts, litigation support, mediation, arbitration, and construction litigation. His services have included providing construction cost audits, cost estimation, analysis of change orders, delay and disruption claims, acceleration claims, loss of productivity claims, construction method analysis, and defective design claims.

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## Session 8

### Lost Productivity Claims: Identification, Measurement and Recovery

■ Presented by **William Ibbs & Paul Stynchcomb**, Ibbs Consulting Group Inc.

More and more construction claims are including a loss-of-productivity component these days. But too often the claimed amount is not properly substantiated or presented. And loss of productivity is often the reason for other claim elements, such as delay, acceleration and extended overhead. Understanding what makes a good lost-productivity claim, its strengths and weaknesses, and how to respond will help you prepare, manage, analyze and negotiate them. Listeners will learn the latest technical and legal concepts associated with loss of productivity to help them:

- Understand what productivity is and how it should be measured
- Review guidelines, methods, and tools commonly used to measure loss of productivity
- Determine when loss-of-productivity claims can be asserted
- Become familiar with recent developments in how courts and boards have treated loss-of-productivity claims
- Evaluate what types of documentation should be assembled and developed in anticipation of a claim
- Learn what contractual provisions can be used to present (or rebut) and support loss-of-productivity claims

#### YOUR PRESENTERS

**Dr. William C. Ibbs** is a recognized professor and expert on the subject of construction and construction claims, particularly cumulative impact of changes, schedule delay and disruption, and loss of labor productivity. He and the associates of his firm have also worked and testified on other construction-related issues, such as professional standard of care, personal injury, false claims and loss of business value disputes. He has consulted on projects with a total constructed value of \$30 billion all over the world, with clients such as Bechtel, Chevron, Obayashi, the US Navy and various public agencies.

**Paul Stynchcomb** recently retired as Senior Managing Director in the Forensic and Litigation Consulting practice of FTI. He has served the construction industry since 1984 as an expert in CPM scheduling, construction management, contract administration, and labor productivity. Prior to 1984, Mr. Stynchcomb held construction management positions in several major U.S. construction firms. Mr. Stynchcomb has been qualified as an expert in CPM scheduling, construction management and subcontract administration.

# Sessions

## Session 9

### Subcontractor and Suppliers: Special Issues & Concerns

■ Presented by **Chris Anzidei**, Christopher Anzidei, PLLC & **Chris Brasco**, Watt, Tieder, Hoffar & Fitzgerald, LLC

Subcontractors and suppliers face many risks that can erode anticipated profit margins and even expose them to substantial liability in the event of delays or cost overruns. Further risks arise under their subcontracts, which typically include one-sided provisions and risk-shifting clauses imposed by the general contractor. On many projects, onerous contract terms flow down through the owner's contract with the general contractor. Attorney Chris Anzidei explains how contract language plus varying rulings from state-to-state play a role in the risks and concerns for those providing or furnishing labor, material and equipment on a project as a subcontractor or supplier, including:

- Proprietary specifications
- Severin Doctrine, liquidating agreements and pass-through claims
- Pay-if-paid and pay-when-paid provisions
- Mechanic's liens, Miller Act and other remedies for unpaid subcontractors
- Mediation and arbitration of subcontractor disputes

#### YOUR PRESENTERS

**Christopher Anzidei** has more than a dozen years of experience in the construction industry. He has litigated complex disputes for clients both small and large in a wide variety of surety, construction, and government contracts matters. He has also drafted and negotiated contracts, counseled clients on contract administration and compliance, and successfully litigated myriad cases ranging from bond and indemnity claims to breach of contract and termination actions. Mr. Anzidei is a frequent author and presenter on issues pertaining to construction, surety and government contracts law and is actively involved in presenting seminars to industry trade groups and organizations.

**Chris Brasco's** experience includes all facets of the construction process from contract formation through the disputes process. His legal credentials are complemented by hands-on experience that includes the job site administration of a U.S. Corps of Engineer housing project in Germany. More recently, he was involved with the federal government in negotiating the successful repurchase of mission-critical projects throughout Afghanistan and the Middle East after the program-wide default of a large government contractor.

## Session 10

### Pricing: Putting the Dollars on the Damages

■ Presented by **Don Harrington**, **Brent McSwain** & **Rex Snyder**, Sage Consulting Group

In any change order or claim, there are numerous elements of direct costs of doing the extra work, the indirect and overhead costs of the work, and possibly delay and impact costs related to the changes or delays that were incurred. The consultant team of Don Harrington, Brent McSwain & Rex Snyder of Sage Consulting Group discuss in great detail the various types of costs that may be allowable for any given claim or change order, and what's involved in the proper preparation, pricing and support of a request for equitable adjustment (REA). This recorded program will review a large range of pricing issues, including:

- Forward pricing and post pricing
- Delay and disruption costs – “measured mile,” “total cost” and other methods
- Acceleration costs – overtime, inefficiency
- Field overhead, home office overhead and Eichleay
- Experts and attorney fees

#### YOUR PRESENTERS

**Don Harrington** has over 35 years of experience in the construction industry, including 20-plus years of experience preparing and analyzing construction claims. He has provided expert analysis in hundreds of cases. Don specializes in construction defect and cost estimating/damage analysis related to residential, commercial and civil projects.

**Brent McSwain** has worked as an owner representative, responsible for developing multi-million dollar acute-care hospital facilities, offices, warehouses, correctional and probation facilities, as well as administering disaster recovery services. He has extensive experience in preparing and defending claims as well as in litigation support, deposition and trial testimony.

**Rex Snyder** has more than 30 years of construction-related experience, including field/project engineering, project scheduling, project management and project executive work. He has managed projects valued at up to \$90 million. Drawing on his experience in construction management, cost control and scheduling, Rex provides cost analysis and CPM scheduling analysis and implementation.



# Sessions

## Session 11

### Negotiation of Construction Claims and Change Orders

■ Presented by **Kathleen Barnes**,  
Watt, Tieder

Successful negotiations are not just about bargaining table tactics, but they are grounded in proper proposal preparation, company goals, knowledge of the process and understanding your opponent. Attorney Kathleen Barnes walks through the process and the considerations to properly prepare for and achieve successful negotiations, including how to:

- Identify the various goals of a negotiation – its more than a bottom-line dollar amount
- Anticipate the considerations of your opponent
- Perform recovery risk analysis
- Prepare for the negotiation
- Learn the importance of a term sheet and what it should contain

#### YOUR PRESENTER

**Kathleen O. Barnes**, a senior partner with Watt, Tieder, Hoffar & Fitzgerald, LLP, focuses on domestic and international construction contracting and federal government contracts. Kathy counsels and advises contractors, design engineering firms, construction managers and owners in all phases of industrial, power, civil, transportation and commercial construction in the United States and overseas. For more than 20 years, Kathy has represented clients at every stage of complex construction dispute resolution, including claim preparation, negotiation and other informal ADR procedures, mediation, arbitration and litigation in both federal and state courts. Kathy has an active government contracts practice and counsels contractors and design engineers on a broad range of issues involved in government contract administration and compliance.

## Session 12

### Alternative Dispute Resolution: Your Key to Staying Out of Court

■ Presented by **Jim Zack**, Navigant Construction Forum™, **Dave Halligan**, Navigant Consulting, Inc., **Adam Bult** and **Jonathan Pray**, Brownstein Hyatt Farber Schreck, LLP

In the past two decades, settlement of disputes has come a long way from litigation and arbitration. This session discusses over 40 alternate methods for resolving disputes when they cannot be negotiated by the parties. The intent of these methods is to promote a decrease in expensive litigation or arbitration costs through the increased use of mediation, partnering, dispute resolution boards and other methods, by being able to:

- Identify the basic types of ADR – pre-dispute, facilitative, recommendation, final & enforceable decision
- Learn how the methods work
- Consider factors such as cost, timeliness and confidentiality
- Evaluate the success rates of different methods

#### YOUR PRESENTERS

**Adam Bult**, Shareholder with Brownstein Hyatt Farber Schreck, LLP, has extensive experience litigating complex business and construction disputes in state and federal courts throughout Nevada.

**Dr. David Halligan** is an Associate Director in the Global Construction Practice of Navigant Consulting Inc. Dr. Halligan has 22 years of experience providing clients with schedule delay analyses, construction management, project controls, and claims resolution assistance on a wide variety of heavy civil and facilities projects.

**Jonathan G. Pray**, Shareholder and Deputy General Counsel with Brownstein Hyatt Farber Schreck, LLP, regularly advises clients on the drafting and negotiation of construction contracts for public and private projects and provides advice to project participants over the course of construction – all with the goal of helping his clients resolve disputes and avoid litigation altogether.

**James G. Zack** is Executive Director, Navigant Construction Forum™ – the construction industry's global resource for thought leadership and best practices on avoidance and resolution of construction project disputes globally. A Fellow of AACE and RICS, Mr. Zack is a Certified Forensic Claims Consultant, a Certified Construction Manager and a Project Management Professional.

# Sessions

## Session 13

### Termination of Contracts and Subcontracts

■ Presented by **Daniel D. Rounds & Nick Surace**, Smith Pachter McWhorter, PLC

Construction contracts have evolved to recognize an owner's right to terminate a contractor before project completion without rendering the action a breach of contract. Standard contract clauses define an owner's and a contractor's rights and obligations in the event of a termination. Terminating a contract is a major decision not to be taken lightly. Listen to attorneys Dan Rounds and Nick Surace to understand the background issues relating to the different termination scenarios, practical considerations, remedies, recovery and rights to appeal, including:

- Termination for default—factors for owners to consider before making the decision
- Role of the surety on a default termination
- Termination for convenience—what the contractor should do when receiving a termination notice
- What costs are recoverable on termination for convenience
- Public vs. private clauses; termination of subcontracts

#### YOUR PRESENTERS

**Nicholas J. Surace** is an Associate with Smith Pachter McWhorter, PLC, and practices in both construction and government contracts matters, including complex construction litigation.

**Daniel D. Rounds** represents clients in government contract and construction matters. Mr. Rounds provides counsel on a wide range of federal and state construction, procurement, and grant issues, including contract negotiation, contract changes and claim preparation, contract termination settlements, and regulatory compliance including Buy America and other domestic preference regulations.

## Session 14

### Bonds and Liens: Protect and Collect

■ Presented by **Rebecca Glos**, Watt Tieder

When a contractor seeks recovery for extra costs and is not achieving a negotiated settlement on a claim or change order, application for recovery can be made against bonds or liens. This may be in place of, or in addition to, other courses of administrative appeals, alternate dispute resolution or litigation. In addition, owners rely on bonds to remedy situations of non-performing or insolvent contractors, subcontractors or suppliers. Attorney Rebecca Glos explains what bonds and liens are, how they work and what contractors, owners and suppliers need to know to successfully execute them, including:

- How bonds or liens protect contractors and suppliers
- What protections bonds and liens provide to the owner
- How these instruments vary and perform on public vs. private construction
- Important considerations to ensure these protections don't fail due to improper filing or procedural issues

#### YOUR PRESENTER

**Rebecca Glos**, a partner within the Surety group at Watt, Tieder, Hoffar & Fitzgerald, LLP, provides a full range of litigation services in all aspects of construction and surety law on a state and national level. In addition to litigating subdivision bond claims, Rebecca's practice includes litigating public and private construction disputes involving sureties, such as resolving time-related claims (delay/impact), enforcing payment defenses against bond claims, analyzing scope claims and litigation (differing site conditions, change orders, and inadequate plans and specifications), and providing counseling and transactional services to the construction industry (contract preparation and negotiation).

# Sessions

## Session 15

### Construction Insurance: Claims of a Different Nature

■ Presented by **Scott C. Turner**, Smith, Currie & Hancock LLP

There are construction contract claims, bond claims and insurance claims. Occasionally, there may be some partial overlaps in claims, so it is good to be aware of insurance considerations to be able to determine if that is a viable venue for recovery of costs. But savvy construction professionals need to fully understand the various types of policies and protections so that if the need to make an insurance claim arises, they are properly prepared. Join in with one of the foremost construction insurance attorneys as Scott Turner explains the various types of coverages, who is responsible for providing coverage, who pays for the policies and who is covered.

This session will help you:

- Be aware of and avoid potential traps
- Become familiar with the various type of policies that are part of the entire project life cycle, including design, construction and post-construction
- Learn all of the actions that go into play when an event occurs that may potentially be a covered incident
- Understand the obligations of the insurance companies to investigate, provide legal defenses and pay judgments on a covered incident

#### YOUR PRESENTER

**Scott C. Turner** is of counsel in the Washington, DC and San Francisco, California offices of Smith, Currie & Hancock LLP. Scott is one of the foremost attorneys nationally on the subject of insurance recovery for policyholders in the construction industry. He is the author of the leading legal treatise on that subject, the two volume, 1,700 page "Insurance Coverage of Construction Disputes (2nd ed.)," published by Thomson Reuters West. This treatise is frequently relied upon, cited, and quoted in important, pro-coverage, appellate law decisions bearing on construction insurance. The state Supreme Court and Federal Court of Appeals decisions to have done so most recently are *National Sur. Corp. v. Westlake Inv., LLC*, 880 N.W.2d 724 (Iowa 2016) and *Capital City Real Estate, LLC v. Certain Underwriters at Lloyds London*, 788 F.3d 375 (4th Cir. 2015) (Md. law).

## Session 16

### Alternate Project Delivery Claims for Design-build, GMP and Other Delivery Methods

■ Presented by **Richard Burnham**, Consultant and **Mark Nagata**, Trauner Consulting Services

Alternate project delivery methods require alternate methods of identifying and analyzing changes. Each alternate project delivery method produces its own unique challenges in dealing with the determination of costs and what exactly constitutes a change order. Listen to Richard Burnham and Mark Nagata to learn how anticipated and unanticipated costs are determined when using GMP, Design-Build and related project delivery methods [Integrated Project Delivery (IPD), Open Book Accounting (OBA) and Engineer, Procure & Construct (EPC)] and how to:

- Identify the baseline for measuring changes
- Deal with less than 100% complete contract documents
- Work with allowances and contingencies
- Evaluate scope and Value Engineering changes
- Review recommended clauses and best practices to reduce risk and avoid disputes

#### YOUR PRESENTERS

**Richard Burnham**, Consultant, a construction industry executive and attorney, recently retired as director of Trauner Consulting Services, Inc. Mr. Burnham brings years of hands-on experience with all types of projects and a spectrum of contract delivery methods from a variety of perspectives. His past experience includes serving as a vice president of a major international contractor whose \$1 billion plus annual revenue included major building and heavy construction projects for both public and private clients, a Senior Manager of a major engineering company, an Advisor to public transportation agencies and an expert witness regarding the proper administration and analysis of changes, delays, and damages.

**Mark Nagata**, PSP, is a Director and shareholder with Trauner Consulting Services, Inc. His expertise lies in the areas of critical path method scheduling, construction claim preparation and evaluation, dispute resolution, technical document development, and cost analysis. He has performed virtually all types of analyses, including delay, productivity and efficiency costs, and the determination of damages on varied projects throughout the U.S. and abroad.

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