



The Critical Path

The newsletter of the
Construction Law Committee

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In construction, it is
imperative to have
a solid foundation.





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Leadership Note

From the Vice Chair: Thinking Vegas . . .

By David L. Jones



We're into the homestretch leading into our annual [Construction Law Seminar](#), this year in Vegas. Meanwhile, as spring rapidly approaches, for many, Daylight Savings means "springing forward" and losing a full hour.

Most of us gladly trade that lost hour for warmer temperatures. However, any of us who have ever worked on a brief in the waning hours leading to the deadline know that lost time can equal lost opportunity. Lost opportunity in turn can mean the difference between success and failure. Often, I wish that I could call a time-out, pausing time and preserving opportunities. Unfortunately, in life, we aren't assigned time-outs and rarely get a redo. In short, life is about fleeting moments and opportunities that must be seized. Success, after all, favors those who act.

Thankfully, for our Construction Law Committee family, opportunities and successes abound. We are fresh off the success of our inaugural Construction 101 Bootcamp, where nearly 50 participants spent a day immersed in the basics of construction law after a fun night of networking. Well . . . maybe not all fun. There was that small issues of the Texas ping-pong ringer who took down yours truly in *The Matrix* style, life-flashing-before-my-eyes game that gives me chills every time I see a ping pong paddle. I'd like to report that she "was who I thought she was" but in point of fact, I went into that game thinking that my twenty year hiatus should have little bearing on the outcome. Very likely, it didn't. Hat's off champ! Bring your inscribed paddle to Vegas and we'll make some real money.

In February, our steering committee once again descended on Chicago for our annual fly-in meeting and bonding escapade. After a night of networking, our steering committee spent a day engaged in intensive discussions regarding new and old initiatives, partnerships, opportunities, and execution. Those discussions make clear that ours is a committee committed to action. We continue to build and strengthen industry relationships with organizations that include the Construction Financial Management Association (CFMA), the National Association of Home Builders (NAHB), Associated Builders and Contractors (ABC), the National Association of Women in Construction (NAWIC), and the American Institute of Architects (AIA). We also resolved to pursue a connection with

the American Subcontractors Association (ASA). These partnerships are already affording Committee members opportunities to present to and access industry professionals locally and nationally. Those interested in taking advantage of the opportunities should contact Mike Sams, who is spear-heading this effort. Mike can be contacted at mpsams@kandslegal.com.

We also discussed offering half and full day programs to the insurance industry on local basis in order provide a valuable resource to our industry partners while engendering goodwill for our DRI and Committee. Additionally, we brainstormed local networking events designed to promote DRI, our annual construction law seminar, and the DRI annual meeting. All are encouraged to become actively engaged in these initiatives. If you have questions about how to integrate with our community or otherwise become engaged, we encourage you to contact Diana Gerstberger at diana.gerstberger@axiscapital.com or me at djones@wlj.com.

Now, I'm thinking Vegas. The stage is set. Much like Las Vegas shows and casinos, everyone's aware of our highly rated substantive educational opportunities, which promise to raise the bar even higher this year. However, this year there's an opportunity to register for an intensive Litigations Skills Workshop. With "Dig This," a kickoff networking opportunity that offers some of our least responsible Committee members the opportunity to operate the same heavy equipment that we've been unable to convince our clients would "give us a better appreciation of the facts of the case," there is bound to be at least one good story coming out of Las Vegas. But, as the saying goes, "what happens in Vegas stays in Vegas." That is to say, you've got to be there. [Register](#) yourself and two of your closest friends and we'll see you in Vegas!

David L. Jones is a partner in the law firm of Wright, Lindsey & Jennings LLP in Little Rock, Arkansas. His practice focus is construction defect and related contract litigation, including representation of owners, contractors, design professionals, sureties, and suppliers. He is a contributing author to several state-wide and national construction law publications. He also presents on construction topics and is an active member of the Arkansas Bar Association's Construction

Section and the DRI Construction Law Committee, where he currently serves as Vice Chair of the Construction Committee. He previously served as board chair of a not-for-profit residential builder and as a board member for ACE (Architecture, Construction, and Engineering) Mentor Program

of Indiana. In 2013, he was recognized as one of Arkansas Business 40 Under 40, and has since been recognized in various local, statewide, and regional publications. Prior to practicing law, he gained site-level construction experience.



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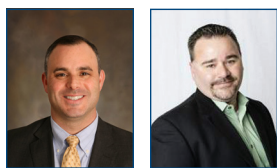
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Feature Articles

As Technology Improves, So Does Its Application in the Construction Industry

By Jason Daniel Feld and Rob Weingarten



In a recent article in the San Diego Union Tribune, it was estimated that 80,000 new homes are built in California each year. Construction starts increased by 4.8 percent to \$773 Billion dollars in 2018 and is expected to increase to 12.4 percent by 2021. One major corollary to the boom in construction in California is the emergence of technologies utilized in the construction industry. The use of augmented or virtual reality, robotics, cloud and mobile technology, inter-connected job sites, construction management software, wearable technologies, drones, smart/green construction, Building Information Modeling (BIM) and 3d Printing are just a sampling of the ever-present construction technologies at the construction jobsites that are increasing productivity and lowering construction costs.

Construction project management software is improving daily which allows for easier scheduling, project manage-

ment, collaboration with design professionals and overall time reduction to better serve construction companies. In addition, the use of 3D Printing, wearable technologies and drones to do site mapping and provide real-time construction monitoring assists with making the jobsites safer and more efficient. These technologies provide better information and survey data for future projects as well. These technologies are becoming more affordable and will eventually replace the antiquated and outdated site management programs used for the past decades. The use of robotics to eliminate waste and reduce man-power is also becoming standardized for construction of component parts and will eventually replace a significant portion of the labor used in construction projects throughout California.

In discussing the increase in technology with Team Leader Greg Hall from Werner Systems/Woodbridge Glass, from the vantage point of a larger glazing company, we learned that while there has been an increase in the

amount of BIM modeling and a more comprehensive coordination amongst the construction trades, the current trend is for the larger subcontractors (i.e. framing, sheet metal, glazers) to be involved in the modern technology. But we are also seeing that not all the other adjacent scopes, like plaster contractors, stone contractors and other exterior envelope finishes are participating at this time. This is likely due to the cost impacts that the more modern technological devices carry with them. Additionally, Mr. Hall and his company are seeing an increase in the use, including their own internal use, of 3D printing. This printing helps the contractors create new parts immediately, which allows them to see and touch the products long before they are integrated into an existing construction project. While the long-used AutoCAD computer drafting software is still fully employed, it is now being overshadowed by more intelligent 3D modeling software that can turn a drawing into a fabricated product much easier, requiring fewer steps in the process.

Colleen Black, Manager of the Quotations Department for Graybar, agrees that a lot of their current commercial construction projects are being constructed with their electrical contractors' use of BIM software. This software allows them to create pre-fabricated products in the contractors' warehouses, which then makes the installation on the jobsite faster and more efficient. Ms. Black indicates that this trend is becoming more the standard and norm in the industry.

California is at the forefront of including energy efficiency guidelines in its building code. In fact, California is the first state in the country to require this type of solar installation on all new homes. Last year, on May 19, 2018, the California Energy Commission voted unanimously to approve an update for the Building Energy Efficiency Standards for 2019, which was then approved by the California Building Commission. This significant change makes it mandatory for all new homes (and commercial buildings under three stories tall) to be built with solar panels as of January 1, 2020. Even though some California cities (i.e. San Francisco, Lancaster and Santa Monica) have already made some type of solar installation a requirement, the larger industry has not quite followed yet. Based on the most recent studies, currently only 15–20 percent of new homes are built with solar panels installed. Because California is the only state with this requirement and the cities where the local government sets their own standards do not see a lot of new construction, the potential impact on the building industry and the real estate market is not yet ascertainable. The new code sections are the result of a plan that was originally introduced in 2007 which called

for all new residential building to be “zero net” by 2020 and all commercial building to be “zero net” by 2030. “Zero net” refers to the net energy consumption of a building, meaning that if you consume exactly the same amount of energy as you produce through your solar panels, then your building has a zero net effect on the energy grid.

The construction industry accounts for 20 percent of global emissions. The construction of environmentally friendly buildings and green technology will replace the classic building methods to increase utility, durability and the economic facts of construction. In the future, building components will be made from recycled materials. Reusable energies will power the home, air conditioners and asphalt will thermally heat themselves, and buildings will produce zero carbon emissions. Ms. Black notes that in employing concepts of clean energy and “Green” construction, California Title 20 and Title 24 continue to bolster their requirements requiring new buildings to be more energy efficient. From her vantage point, California has some of the strictest laws on energy within the United States. All new construction and remodel projects over 10,000 square feet in size require controls on lighting, including plug loads. Electrical engineers are forced to keep wattage consumed per square foot to an amount under the allowed lighting power for a certain space.

Finally, prefabrication and modular construction will take a giant leap forward in 2019. This technology allows for repeatable structures to be manufactured off-site and assembled easier and cheaper than ground-up construction for hotels, apartments, offices, and other commercial buildings. They are built to exact specifications and manufactured without the worry of weather or other inclement factors that would delay construction. Modular units are also made from recycled materials and significantly reduce excess materials and waste.

From a claims handling perspective, having worked with hundreds of contractors including general contractors and subcontractors/artisan subtrades who provide construction services for both commercial and residential projects, with the advent of technology, responding to construction defect and property damage claims is becoming more efficient. Our ability to expeditiously obtain and provide retained construction consultants, defense counsel and expert witnesses with job file documents, including BIM, 3D printouts, and project/scope photo documentation obtained from drones, can often times lead to quicker resolution of those claims implicating the respective contractor, which can result in bringing the overall cost of the claim handling down.

We are moving closer and closer to a time when these emerging technologies will become the standard in the construction industry. It is imperative for construction professionals to continue to develop, modernize and improve on these ever-changing construction technologies.

Jason Daniel Feld is a founding partner of Kahana & Feld LLP where he chairs the Real Estate and Construction and the Insurance Defense practice groups. Mr. Feld focuses his practice on the defense of homebuilders, contractors, developers, and real estate professionals primarily in construction defect, general liability, insurance defense, construction accident, and real estate matters. Mr. Feld also represents government entities handling construction,

eminent domain, general liability, and environmental claims. Mr. Feld is a nationwide leader in construction claims and active industry speaker, serving as panel counsel for many prominent insurance carriers. Mr. Feld is also personal counsel to several California homebuilders, developers, and general contractors.

Rob Weingarten is Vice-President for Certus Claims Administration LLC, where he directs, manages, and implements handling policies and procedures for construction defect and construction casualty claims. He directly supervises and manages multiple examiners handling litigated and non-litigated claims involving large exposures, complex litigation, coverage issues, construction defects, numerous venues, and direct actions.

Extrapolation Okay, Existing Damages Not Necessary for Recovery, and Uninhabitability Not Required in Construction Defect Case

By Elizabeth B. Ferguson and Hillary L. Albertson



In June 2013, Heron's Landing Condominium Association filed a Complaint against D.R. Horton, Inc.-Jacksonville, the developer and general contractor the project

in Duval County, Florida. The project consisted of 240 residential units in 20 buildings. In its Amended Complaint, the Association alleged D.R. Horton violated the Florida Building Code, breached warranties, and was negligent in its construction of the project.

Prior to trial, D.R. Horton filed a motion in limine seeking to preclude the testimony of the Association's construction defect expert. In the expert's report, it was recommended that all of the stucco on the project be replaced, based on a limited number of stucco samples. D.R. Horton alleged the expert should not be allowed to testify about the defects, or repair recommendations as the opinions were inherently unreliable and based on improper extrapolation.

During the hearing, the Association's expert testified he had done "hundreds of building condition assessments and building condition surveys over the years." The expert also testified that he recommended all 220,000 sq. ft. of stucco needed to be replaced based upon "200 something feet of testing." The expert explained this opinion was formed based on "[a] lot of visual observation, a lot of

indications of problematic conditions with the stucco that we have seen many times on other projects that have led to a need to remove those and the unpredictability of where water actually comes in...." He also testified that a professional engineer performed a peer review of his report for accuracy.

The trial court held the extrapolation by the Association's expert was "scientifically reliable" and the case went up on appeal to the 1st DCA in Florida. The appellate court upheld the trial court's ruling the expert used a scientifically reliable and peer-reviewed methodology that was the industry standard, and neither new nor novel.

At trial, D.R. Horton had moved for a directed verdict on two causes of action: violation of the Florida Building Code and breach of the warranty of habitability, both of which were denied.

On appeal, D.R. Horton argued the Association had failed to demonstrate actual damage, as required for a claim of violation of the Florida building code, per Section 553.84, *Florida Statutes*. The appellate court disagreed, ruling the Association's expert had testified regarding defects in the units and opined those defects needed to be remedied in order to avoid additional loss and damage. The appellate court upheld the denial of the motion for directed verdict,

in essence upholding the use of speculative damages as a basis for the award of damages.

D.R. Horton also argued on appeal that the Association had failed to establish a breach of the implied warranty of habitability, as there was no evidence any of the units were uninhabitable. D.R. Horton argued that based on the Supreme Court's ruling in *Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass'n*, 127 So. 3d 1258, 1268 (Fla. 2013), as no units were uninhabitable, no breach of the warranty of habitability had been proven.

The appellate court again disagreed, noting that although the defects did not force the homeowners to abandon their homes, there was testimony the units did not meet the ordinary, normal standards reasonably expected of living quarters of comparable kind and quality which was enough to support the claim.

This ruling out of Florida's 1st DCA is a major blow to defendants in construction defect cases. Expert witness opinions which are based on opinion, more than fact, will now be judged as "scientifically reliable." Coupled with the recent move in Florida from *Daubert* to the *Frye* standard,

the bar for allowable expert testimony is nonexistent. We do anticipate this ruling will be appealed, but in the meantime, working toward an early resolution of construction defect cases is more important than ever before.

Elizabeth B. Ferguson is a shareholder with the law firm of Marshall Dennehey Warner Coleman & Goggin. Her practice focuses on the defense of Owners, Contractors, Material Suppliers, Developers, and Design Professionals (Architects, Engineers, and Surveyors) against claims of liability, breach of contract, construction defect, design defect, delay, liens/bonds, insurance coverage issues, and licensure issues. She also provides transactional support for her construction clients, including contract drafting and review.

Hillary Albertson is a member of Marshall Dennehey Warner Coleman & Goggin PC's Professional Liability Department, where the focus of her practice is construction defect litigation and general professional liability defense. In this role, Hillary provides counsel to sub-contractors, general contractors, manufacturers, suppliers, architects and engineers in claims brought against them in a variety of construction projects and disputes.

OSHA's New Standard for Confined Spaces in Construction

By Jason Rogers



The Occupational Safety and Health Administration (OSHA) has published standards governing Confined Spaces in Construction (29 C.F.R. 1926, Subpart AA) ("Confined Spaces Standards"), to provide added protections to employees performing work in confined spaces. Specifically, spaces (a) large enough for a worker to enter with (b) limited or restricted means of entry or exit and (c) not designed for continuous occupancy (e.g., sewers, man-holes, HVAC ducts, boilers, crawl spaces, tanks, and pits). The Confined Spaces Standards went into effect on August 3, 2015.

The New Confined Spaces Standards apply to the following parties:

- The "host employer," such as the owner or property manager of the site;
- The "controlling contractor," that is, the party having primary control over the project; and

- The "entry employer," whose employees will access the confined space.

These parties are subject to a comprehensive set of requirements designed to protect employees from exposure to hazards associated with work in confined spaces. The requests include the following:

- Sit evaluation by a competent person to identify confined spaces;
- Continuous employer monitoring of confined space atmospheres, including lookouts or equipment to monitor, for example, engulfment hazards like flash flooding in storm sewers;
- Training workers on location and hazards of permit-required confined spaces;
- Maintaining a written confined space program if workers will enter permit-required confined spaces; and

- Ensuring that unauthorized workers do not enter permit-required confined spaces.

Additionally, if there are multiple trades working in the same confined spaces, employees must coordinate activities to avoid introducing hazards into confined spaces from outside work areas.

The heaviest burden of onsite administrative falls on the controlling contractor, who must act as the primary point of contact for information about the permitted confined spaces at the worksite and ensure that all required information is communicated to the entry employer. The controlling contractor also is charged with implementing the above requirement, including taking steps to prevent the introduction of “outside” hazards to confined spaces. For example, if the host employer’s employees will be running a generator near the entrance of a confined space, the controlling contractor must inform the entry employer if the generator exhaust could result in increased levels of carbon monoxide.

Permit-Required Confined Space

A confined space that contains certain hazardous conditions may be considered a **permit-required** confined space under the standard. **Permit-required** confined spaces can be immediately dangerous to workers’ lives if not properly identified, evaluated, tested and controlled. A **permit-required** confined space means a confined space that has one or more of the following characteristics:

- Contains or has the potential to contain a hazardous atmosphere;
- Contains a material that has the potential for engulfing an entrant;
- Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or
- Contains any other recognized serious safety or health hazard.

Residential Construction

Prior to starting work on a residential project, an employer must ensure that a competent person identifies confined spaces where one or more of its employees may work and identifies each space that is a permit-required confined space. Employers do not have to physically examine each attic, basement, crawl space, provided that they reliably

determine whether spaces with the same or similar layouts contain a hazard that would require a permit.

Some spaces in a residential home may be considered confined spaces or permit-required confined spaces. An attic, for example, will not be considered a confined space because there is not limited or restricted means for entry and exit. According to a publication by OSHA and the National Association of Home Builders (“NAHB”), attics determined to be confined spaces would generally not be permit-required confined spaces because they typically do not contain the types of hazards or potential hazards that make a confined space a permit-required confined space (those that could impair an entrant’s ability to exit the space without assistance).

Basements in a residential home that are designed for continuous occupancy by a homeowner are not considered confined spaces under the Standards. The same is true for crawl spaces.

The requirements imposed by the Confined Spaces Standards are comprehensive and detailed, and this article is intended to provide a general summary only. Contractors and subcontractors should take appropriate steps to familiarize themselves with OSHA’s Confined Spaces Standards and should consult legal counsel if necessary to ensure compliance. Employers must ensure that properly trained rescue and emergency services are available before entry into permit-required confined spaces. For a full discussion of an entry employer’s obligations to provide rescue, see OSHA’s Fact Sheet entitled: “911 Your Confined Space Rescue Plan?”

Resources

For Additional information, see OSHA’s Confined Spaces in Construction webpage at www.osha.gov/confinedspaces.

How to Contact OSHA

For questions or to get information or advice, to find out how to contact OSHA’s free on-site consultation program, order publications, report a fatality or severe injury, or to file a confidential complaint, visit www.osha.gov or call 1-800-321-OSHA (6742).

Jason Rogers is a litigator, risk management counselor, and contract negotiator, with Kenney & Sams, P.C. He represents business owners, contractors and individuals in high-stakes matters before both state and federal courts. Clients look to Jason to guide them through all aspects of litigation, medi-

ation and arbitration. Jason brings extensive experience to clients in connection with contract matters, business torts, mechanic's lien claims, construction and real estate issues. He focuses on helping businesses negotiate disputes while minimizing any risks associated with the complex projects

and business deals. Jason's experience in drafting and negotiating construction contracts allows him to identify risk, liability and other insurance coverage issues that are critical to their success.

Legislative Update

Changes on the Public Construction Horizon in North Carolina

By Steven Hemric



The past year in the North Carolina legislature has been incredibly active. Among the legislation proposed and adopted, a few of the bills will create changes in how contractors interact with various public entities. Most notably, big changes are on the horizon for contractors that work with the NCDOT and with school systems.

Currently sitting with the Committee on Transportation, H.B. 1012 "DOT/Project Delivery Method Pilot Project" could allow the NCDOT to use a construction manager-general contractor project delivery system on a limited number of projects in the future. Many contractors will recognize the proposed system as the construction management delivery system currently in use on other types of public projects in North Carolina, typically construction manager at risk (CMAR) or construction manager agency. NCDOT currently uses the processes laid out in Chapter 136 of the North Carolina General Statutes to contract for construction of any NCDOT road or facility, typically using the authorized design-bid-build or design-build delivery systems. If passed, H.B. 1012 will allow NCDOT to use the alternative construction manager-general contractor delivery system on up to five projects with costs of less than \$100,000,000. H.B. 1012 also places other limitation on NCDOT's use of the new system, including that the department must determine if the use of the new system is in the public interest, special reporting requirements, and that NCDOT must establish and implement guidelines for letting of projects under the construction manager-general contractor system. This new program mirrors the design-build pilot program that rolled out after the 1997-98 legislative session and continually expanded after the success of the design-build delivery system on NCDOT projects. If H.B. 1012 goes into effect and the construction manager-general contractor delivery system proves effective on NCDOT projects, similar growth and change in NCDOT's

contracting procedures can be expected. Limits on the number of projects NCDOT could let using the design-build process were removed after about 12 years of the pilot program, and a similar timeline should be expected if H.B. 1012 becomes law, barring significant problems with early projects using the new delivery system.

Changes are also on the horizon regarding North Carolina school construction. In particular, contractors and developers should expect to see an increase in the number of public-private partnerships ("P3s") in school construction. Generally speaking, in P3 projects, a private entity constructs a facility (*i.e.*, a school) then leases the facility to a public entity for a definite period. P3s allow for flexibility in funding and bidding processes, but have been criticized in the past as vehicles to circumvent the rigid bidding process required under N.C. Gen. Stat. Chapter 143. Use of P3s in school construction also raises concerns about maintenance obligations and general construction requirements concerning the quality of the facility. However, these quality and maintenance concerns should be addressed in the front-end contracting process between the public entity and private developer. The increased number of future P3s could come from two legislative developments: (1) direct authorization for P3 development of public schools under H.B. 600 and (2) authorization of municipalities to operate charter schools under H.B. 514. In particular, H.B. 600 "School Construction Flexibility" would directly allow school systems to enter into capital leases of privately developed K-12 public schools. H.B. 514 passed in June 2018 and was enacted as Session Law 2018-3. This law allows, under restrictions, municipalities to establish and operate charter schools. A major concern raised has been how municipalities will fund construction of appropriate facilities for charter schools. One solution for municipalities to fund this construction will be implementation of P3s in partnership with organizations like the YMCA or other large

non-profits that can fund the initial costs of construction and allow the school board to lease all or a portion of the facility for use as a charter school.

Steven Hemric is an Associate in Spilman Thomas & Battle's Winston-Salem, North Carolina, office. His primary area of

practice is litigation with a focus on construction law and commercial litigation. He is a member of DRI's Construction Committee and Scheduling and Delay Claims Subcommittee. Mr. Hemric is also co-chair of the North Carolina Bar Association Construction Law Section's Minority Contractors Liaison Committee and a member of the Forsyth County Bar Association Young Lawyers Division.

DRI News

My Rave Review of the Inaugural Construction 101 Boot Camp

By Elizabeth "Betsy" Burgess



Last November I had the honor of attending the Construction 101 Boot Camp in Chicago. While I have handled construction cases throughout my career, I decided to attend to learn new developments in this area of the law, and to strengthen my practice by collaborating on effective defense strategies with colleagues. Despite the snowy weather, the entire program was fun and informative. This was exactly what I expected given the formidable team that put the program together (including Lisa Black (*Black Marjeh & Sanford LLP*), Diana Gerstberger (*Axis Capital*), and Ami Dwyer (*SEA Consulting Limited PA*)).

On Wednesday, November 7, I met up with the other attendees for a social networking event at Acebounce, which is a fun and lively ping pong-themed bar. We ate, drank, practiced our forehands, threw darts, and met new friends and colleagues in a genuinely fun and lighthearted setting. Thanks to ARCCA and Fullerton Beck LLP for sponsoring this innovative event.

The next morning, Thursday, November 8, bright and early, we attended a series of illuminating and practically useful panel discussions at a convenient location near our hotel. Presenters ranged from seasoned defense lawyers to insurance experts to forensic engineers. The initial discussion, "The Anatomy of a Construction Claim" focused on how a construction case can become complex very quickly as the parties, contractual relationships, insurance policies, and theories of liability are unveiled through diligent discovery and research. The talk then shifted to what defense practitioners can and should do with this information to investigate and defend. Presenters Brandi Blair (*Jones Skelton & Hochuli PLC*) and Denise Montgomery (*Sweeney & Sheehan PC*) made this discussion interesting and fun

with both practical pointers and amusing anecdotes about their own experiences.

Next, we learned about "Important Considerations for Risk Transfer" in complex construction claims. Two of the presenters, Eileen Jenkins (*Great American Risk Solutions*) and Margie Donnell (*Hiscox USA*) are insurance professionals, and provided a valuable non-lawyer perspective on the various components of risk transfer, and the significant role insurance plays in this dynamic. Attorney Josh Levy (*Husch Blackwell LLP*) provided the lawyer perspective and helpful commentary on how practitioners can spot and stay ahead of complicated insurance issues within a case.

We then discussed "Litigation Management and Discovery" with Ashley Kramer (*Comfort Systems USA*), Evan Rudnicki (*Black Marjeh & Sanford LLP*), and Ilka V. Torres (*Brady Risk Management*). This presentation covered the important considerations of experts, tender claims, privilege issues, and valuable discovery techniques and motions that can advance an effective defense. This talk also touched on the ever-important topic of client expectations, guidelines, and reporting practices.

We then enjoyed genuine Chicago deep dish pizza for lunch (thank you Nelson Forensics for sponsoring!) and had some free time to talk and visit before reconvening for a two-part discussion titled "The End-Game: How to Develop and Implement Your Resolution Strategy." The first part of this discussion, presented by Rinaldo J. Cartaya III, *Quintairos Prieto Wood & Boyer PA*, Bill Haydt, (*Trauner Consulting Services Inc.*), Lisa Torron-Bautista (*Schouest Bamdas Soshea & BenMaier PLLC*), focused on evaluating the technical aspects of each construction claim, and identifying how technical expertise may be used to prosecute and defend claims. The discussion also addressed how counsel and expert witnesses can work together through-

out the process to resolve claims, narrow the issues, and prepare for trial.

The second part of the discussion, presented by Alicia R. Kennon (*Wood Smith Henning & Berman LLP*), l'Ashea Myles-Dihigo (*Leitner Williams Dooley & Napolitan PLLC*), and Andrew K. Nieto (*SEA Consulting Limited PA*) specifically addressed the alternative dispute resolution process in a construction claim. This panel provided insight on how to narrow issues and resolve claims using ADR.

The event concluded around 3:45 pm, leaving attendees time and opportunity to get to the airport or otherwise start their travels home. We were given valuable materials

to refer back to on each discussion, as well as Continuing Legal Education credits, and most importantly—new friends, colleagues, and business development contacts. Many thanks to all who conceived of this event, and contributed in planning and putting it into action. I look forward to attending again in the future.

Elizabeth “Betsy” Burgess is a shareholder in the Tallahassee, Florida office of Carr Allison, PC. She litigates exclusively and focuses on retail, premises, and construction. Ms. Burgess also represents employers, associations, and professionals in liability matters.

Increase Your Odds of Holding a Winning Hand!

By Joshua A. Bennett



If you haven't already, please do not forget to mark your calendar for the 2019 [Construction Law Seminar](#), which will be held at Caesars Palace in Las Vegas, Nevada, from April 10–12, 2019.

The Construction Law Committee has been hard at work putting together an incredibly dynamic array of speakers and programs spanning a broad range of topics of interest to construction law practitioners (of all levels of experience). From tips on how to develop business and keep clients, an in-depth discussion of the use of wearable technology in the construction industry, a timely and relevant program on how the construction industry is dealing with a changing world, and a discussion of emerging trends by the plaintiffs' bar—there will be several programs of interest for attorneys of all levels of experience.

Should this be your first time attending (or even thinking about attending) our annual seminar, please don't get the wrong impression—we well know that all work and no play makes for dull attorneys, so rest assured there will be *plenty* of diversion to be found—networking receptions, meets and greets, dine-arounds, and of course, a city full of games of skill and luck for those foolish enough to believe they possess either. Also, don't forget to participate in our community service event by bringing a new or gently used

book to donate in support of Spread the Word Nevada, a children's literacy nonprofit dedicated to advancing early childhood literacy within Nevada's at-risk, low income communities.

So submit your seminar registration, book your flight and hotel, and get ready for a few days filled with fantastic presentations, great networking, and maybe even a lucky roulette spin or two. If anyone wishes to become more involved in the committee, including helping us plan next year's seminar, please do not hesitate to reach out to myself or to program chair Diana L. Winfrey (dwinfrey@tresslerllp.com).

Hope to see you in Vegas!

Josh Bennett is a shareholder of Rogers Townsend & Thomas PC in Columbia, South Carolina, where he focuses his practice on complex litigation and insurance defense matters, with an emphasis on construction, environmental, products liability, toxic tort/personal injury, commercial explosives, professional negligence, and other related areas. He is the marketing vice-Chair for the DRI Construction Law Committee. Josh can be contacted at joshua.bennett@rtt-law.com.

A graphic with a blurred background of light streaks in yellow, green, and blue. At the top left is the 'dri' logo in red. To its right is the text 'Pathway to Partnership' in red, with a blue triangle and a red star icon. The main text 'Unlock the Mystery Behind Partnership' is centered in blue, with 'Partnership' in a larger, bold font. Below this is the text 'Explore DRI's webinar series designed to help young lawyers advance to partner.' in blue. At the bottom left is the hashtag '#DRIP2P' in blue. At the bottom right is a dark blue button with the text 'Learn more' in white.

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