



ABA FORUM ON THE
CONSTRUCTION INDUSTRY

2013 FALL MEETING

CAPITAL PROJECTS:

P3s, Design-Build,
and Beyond

September 26-27, 2013

Omni Shoreham Hotel
Washington, DC



Defending Liberty
Pursuing Justice

BUILDING THE BEST CONSTRUCTION LAWYERS

DEAR COLLEAGUE:

This September the Forum will welcome you to Washington, D.C., for its 2013 Fall Meeting: **Capital Projects: P3s, Design-Build, and Beyond**. Attendees will gain valuable insight into innovative funding, design and construction approaches required to address aging infrastructure and commercial expansion along with the future of more traditional project delivery methods.

This program will be valuable for both experienced practitioners and first time participants in the Forum. Experts in their fields of construction law, design, and finance will examine the allocation and management of project risks in new contexts. There will be something for every participant, whether your practice is primarily transactional or focused on dispute resolution. Thursday will lead off with a roundtable discussion on the next decade of alternative project delivery systems, followed by a comprehensive comparison of the private-public partnership model to classic project delivery strategies. Workshops will be offered on the evolving role of design professionals and a case study of actual P3 projects. Thursday's afternoon sessions include a primer on design-build and EPC contracting, and workshops on payment claims and disputes on P3 projects and an introduction to the use of FIDIC contracts.

Our luncheon speaker on Thursday will be the Honorable Stephen T. Ayers, FAIA, LEED AP Architect of the Capitol.

Friday morning will provide an informative session on federal construction projects presented and co-sponsored by the ABA's

Section of Public Contract Law. Attendees can then choose between a workshop on the use of the P3 financing model for smaller projects and a workshop on the reality of green building and sustainability issues. The program's final plenary session on ethics will examine an array of issues and potential pitfalls arising from multi-jurisdictional and cross-border transactions.

Our program venue – the nation's capital – is familiar to many who know that Washington, D.C. never disappoints in terms of its magnificent monuments, memorials, museums and other attractions. Fall is a wonderful time to visit D.C. and we expect it to provide a unique and inspiring setting for our meeting.

Washington by day or by night is an impressive and inspiring spectacle. Come and join us for your advanced construction CLE, excellent industry and public sector networking, and to forge new or renew relationships with your construction Forum colleagues.

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Becker & Poliakoff, Orlando, FL

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PROGRAM SCHEDULE

WEDNESDAY, SEPTEMBER 25, 2013

10:00 AM – 5:00 PM

ADVANCE REGISTRATION OPEN

3:00 PM – 5:00 PM

ONSITE REGISTRATION AVAILABLE

THURSDAY, SEPTEMBER 26, 2013

7:15 AM – 8:15 AM

FIRST TIME ATTENDEE & NEW
MEMBER BREAKFAST

DIVERSITY BREAKFAST PROGRAM

CONTINENTAL BREAKFAST
IN EXHIBIT HALL

7:15 AM – 5:00 PM

REGISTRATION/EXHIBITION OPEN

8:30 AM – 8:45 AM

WELCOME FROM THE FORUM CHAIR

OPENING REMARKS AND
ANNOUNCEMENTS

8:45 AM – 10:00 AM

PLENARY 1

**ROUNDTABLE ON THE NEXT DECADE
OF ALTERNATIVE PROJECT DELIVERY
SYSTEMS**

The opening plenary session will discuss what lies ahead in terms of industry sectors, teaming arrangements, integrated contracting, financing mechanisms, new funding sources, P3s and beyond and how this will impact industry participants and their lawyers.

MODERATOR

Deborah S. Ballati

Farella Braun + Martel LLP, San Francisco, CA

Bill Ernstrom

Walsh Construction, Chicago, IL

Chris Kane

AECOM, Princeton, NJ

Mary Nash Rusher

Hunton & Williams LLP, Raleigh, NC

10:00 AM – 10:15 AM

BREAK

10:15 AM – 11:30 AM

PLENARY 2

NUTS AND BOLTS OF P3S

To understand P3s is to understand the specialized financing unique to P3s. This program will give a comprehensive overview, compare the P3 model with classic project delivery strategies, examine how P3s are structured, and how they work.

Lewis J. (Larry) Baker

Watt, Tieder, Hoffar & Fitzgerald, LLP,
McLean, VA

Andrew Fraiser

Allen & Overy LLP, New York, NY

11:30 AM – 11:45 AM

BREAK

11:45 AM – 12:45 PM

WORKSHOP A

**THE EVOLVING ROLE OF THE DESIGN
PROFESSIONAL: P3S, BIM AND OTHER
INNOVATIONS**

This presentation will examine the design professional's many questions: How will the role of the design professional change over the next decade? What impact will the changing face of public sector project financing have on opportunities and liability? What impact will BIM and other technology have on projects? How will the use of technology affect the design professional's fee and liability?

Jody K. Debs

CH2M Hill, Englewood, CO

Jay Wickersham

Noble & Wickersham LLP, Cambridge, MA



11:45 AM – 12:45 PM

WORKSHOP B

LESSONS LEARNED ON P3 PROJECTS

This workshop will be presented by lawyers with firsthand experience on P3 projects. It will provide a practical analysis of how the parties to these projects allocated the risk of key construction issues.

Jerry Brodsky

Peckar & Abramson, P.C., Miami, FL

Jim Janetos

Cassels Brock & Blackwell LLP, Toronto, ON

12:45 PM – 2:15 PM

LUNCH SPEAKER

**The Honorable Stephen T. Ayers,
FAIA, LEED AP**

Architect of the Capitol

2:30 PM – 3:45 PM

PLENARY 3

**DESIGN-BUILD THEN AND NOW: WHY
DESIGN-BUILD HAS TAKEN OFF AND
WHAT YOU NEED TO KNOW ABOUT IT**

This session will compare standard form design-build contracts, how these forms have evolved, and will address useful customized provisions for design-build and EPC contracting.

Suzanne Harness

Harness Law PLLC, Arlington, VA

Y. Lisa Colon Heron

Smith, Currie & Hancock LLP, Ft. Lauderdale, FL

3:45 PM – 4:00 PM

BREAK

4:00 PM – 5:00 PM

WORKSHOP C

**ALL THE FUN OF P3S AND GETTING
PAID TOO: PAYMENT CLAIMS AND
DISPUTE RESOLUTION ON P3 PROJECTS
FROM THE CONTRACTOR AND
SUBCONTRACTOR PERSPECTIVES**

Getting paid is the name of the game whether the project delivery method is traditional or alternative. Industry experts explain how project financing and performance issues impact payment remedies on P3 projects, what security may be utilized to encourage subcontractor performance, and whether traditional bonding and subcontractor lien rights are affected.

Jim Wulfsberg

Wulfsberg Reese Colvig & Firstman PC,
Oakland, CA

Stephen M. Rae

Liberty Mutual, Plymouth Meeting, PA

4:00 PM – 5:00 PM

WORKSHOP D

**FIDIC FORMS OF AGREEMENT FOR
INTERNATIONAL PROJECTS**

FIDIC contract forms are widely used outside the US on construction projects, including P3 projects. As US contractors, engineers, and lenders undertake more projects abroad, a working knowledge of FIDIC forms or concepts will increase in importance. This workshop will acquaint practitioners with the latest FIDIC forms most relevant to these types of projects, and draw comparisons to the AIA, EJCDC and other familiar U.S. standard forms.

Ashley M. Howlett

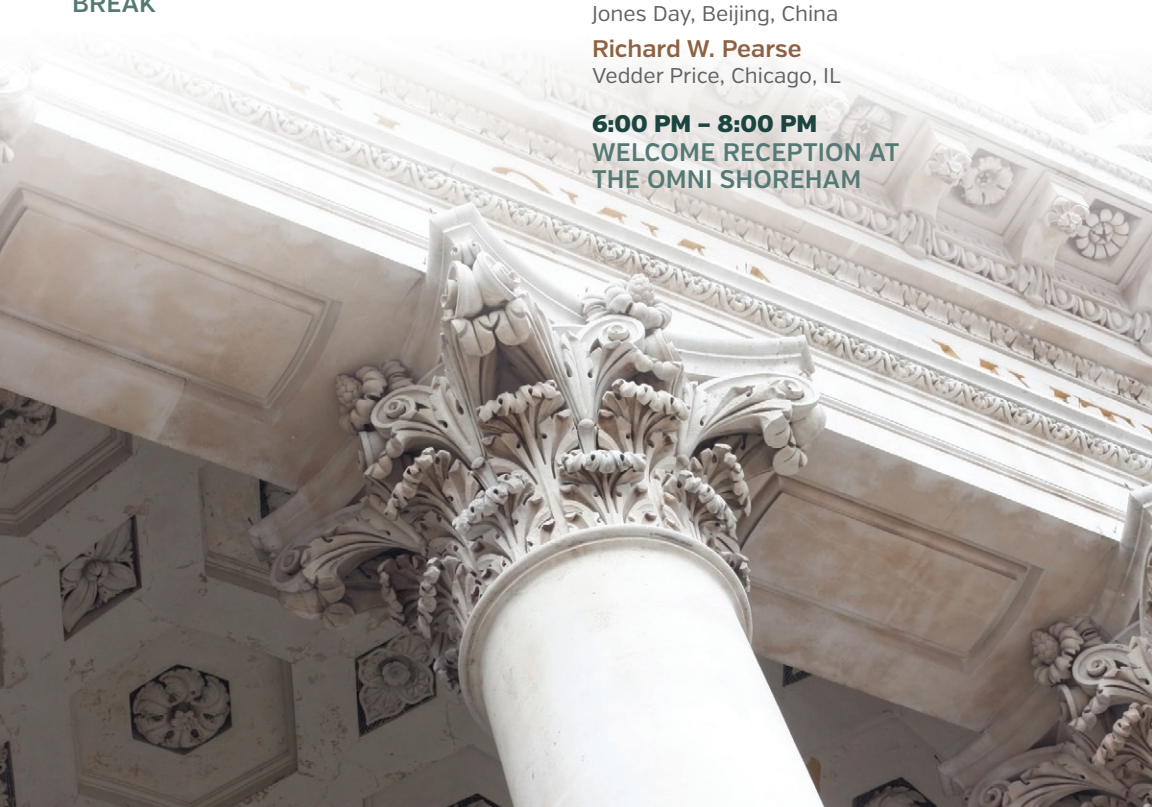
Jones Day, Beijing, China

Richard W. Pearse

Vedder Price, Chicago, IL

6:00 PM – 8:00 PM

**WELCOME RECEPTION AT
THE OMNI SHOREHAM**



FRIDAY, SEPTEMBER 27, 2013

7:15 AM – 12:30 PM

REGISTRATION/EXHIBITION OPEN

7:15 AM – 8:15 AM

DIVISION BREAKFAST PROGRAMS

CONTINENTAL BREAKFAST IN
EXHIBIT HALL

8:30 AM – 9:45 AM

PLENARY 4

**FEDERAL PROJECTS –
THE NEXT DECADE**

*CO-SPONSORED BY THE ABA SECTION OF
PUBLIC CONTRACT LAW*

This plenary will examine recent unique issues and programs on federal construction projects that may not be familiar to those outside the government contracts arena. In particular, this session will look at what the federal government has recently done in the construction realm, what is on tap and what is being proposed on Capitol Hill that will impact federal construction work over the next decade.

Jimmy Christianson

Associated General Contractors of America,
Washington, DC

Mark E. Hanson

Smith Pachter McWhorter PLC,
Tysons Corner, VA

Jessica H. Salmoiraghi

The American Institute of Architects,
Washington, DC

9:45 AM – 10:00 AM

BREAK

10:00 AM – 11:00 AM

WORKSHOP E

**P3S – NOT JUST MEGA PROJECTS
ANYMORE**

Large scale infrastructure and development projects have garnered the most attention from P3 proponents in the United States. High transactional costs and perceived political risks associated with public private partnerships in many jurisdictions make complex P3 delivery a challenge for smaller projects. However, the opportunities and flexibility offered by P3s are opening the market to projects of various sizes. Join the discussion of how P3s are being utilized to deliver smaller assets and infrastructure investments and what strategies may be employed to reduce transactional costs.

Tony Clark

Graham Group Ltd., Calgary, AB

Anatoly M. Darov

Burns & Levinson LLP, Boston, MA

10:00 AM – 11:00 AM

WORKSHOP F

**BEYOND LEED: NEXT GENERATION
GREEN ISSUES FOR DESIGN
PROFESSIONALS AND CONTRACTORS**

Over the past decade, green building and sustainability issues have moved from the fringes of the construction industry to become a major component of everyday practice. This workshop will examine what the new green reality continues to mean for builders and design professionals and what the industry can expect as the next hot button issues in this rapidly evolving sector of the built environment.

Stephen Del Percio

URS, New York, NY

Tracy L. Steedman

Niles, Barton & Wilmer LLP, Baltimore, MD

11:00 AM – 11:15 AM

BREAK

11:15 AM – 12:15 PM

PLENARY 5

**ETHICAL PITFALLS: PUBLIC PROJECTS,
PRIVATE MONEY AND FOREIGN
COMPANIES – WHAT COULD POSSIBLY
GO WRONG?!**

Public projects often involve a confluence of worlds – government sector, private industry, and, in some cases, foreign companies. These projects present an array of ethical issues such as multi-jurisdictional practice, foreign lawyers practicing in the US, attorney-client privilege in cross-border communications and understanding who the client is. This session will examine these issues and offer practical guidance to lawyers on how to work through the potential dilemmas.

Thomas E. Spahn

McGuireWoods LLP, Tysons Corner, VA

12:15 PM

PROGRAM CLOSING REMARKS

EVENT HIGHLIGHTS

FIRST TIME ATTENDEE AND NEW MEMBER BREAKFAST

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

DIVERSITY BREAKFAST

Join us Thursday morning at the Diversity Breakfast Program, sponsored by the Forum Diversity Committee.

EXHIBIT HALL

Visit the exhibits! The Forum exhibit hall brings a variety of companies together in one place with capabilities fitting the unique needs of construction lawyers. Exhibits will be open Thursday, September 26, 7:15 am – 5:00 pm and Friday, September 27, 7:15 am – 11:15 am. Thanks to all of the Forum sponsors and exhibitors for their continued support of the forum!

WELCOME RECEPTION

Start your Thursday evening at the Fall Meeting Welcome Reception at the Omni Shoreham. Enjoy great food and drinks at the social highlight of the program! All registered attendees are invited to the Welcome Reception, included in your registration fee. Guest tickets are available for an additional fee and may be purchased with your meeting registration.

WASHINGTON, D.C. AREA ATTRACTIONS

Washington, D.C. visitors enjoy access to an impressive list of free and fascinating attractions, from the powerful monuments and memorials on the National Mall to inspiring cultural treasures like the Smithsonian Institution, the Supreme Court, Library of Congress and National Gallery of Art. A diverse and beautiful world capital, D.C. invites visitors to step beyond these federal landmarks to explore charming neighborhoods like historic Georgetown, eclectic Adams-Morgan and trendy U Street. D.C.'s neighborhoods tempt visitors with chic boutiques, hip new restaurants and bars, world-class theatres, art galleries and peaceful parks and gardens. For more information, visit washington.org.



CONFERENCE INFORMATION

1. HOTEL INFORMATION:

The conference will be held at the Omni Shoreham Hotel at 2500 Calvert Street NW (at Connecticut Ave.), Washington, D.C. Visit the hotel's website at www.omnihotels.com/FindAHotel/WashingtonDCShoreham for more information.

2. HOTEL RESERVATIONS:

The Forum has negotiated a special room rate of \$250 plus 14.5% tax per night for a single/double room. You may call the hotel directly at 202-234-0700 and mention the ABA Forum on the Construction Industry 2013 Fall Meeting. We have reserved a limited block of rooms through September 2, 2013. You must register for the conference prior to making your hotel reservation. After this date, and if we are sold out of our block, rooms will be assigned on a space available basis at a rate the hotel chooses. All changes and cancellations to guaranteed hotel reservations must be made with the hotel at least 72 hours before the scheduled day of arrival to avoid a one night's cancellation charge.

3. AIR TRAVEL:

Airfare discounts to ABA meetings are available through ABA Orbitz for Business. To book online, go to www.americanbar.org/travel > click on the Orbitz for Business logo at the top of the page > read the instructions under the "Travel Paid by Self" box. For assistance with online or offline reservations using the ABA Orbitz for Business website, call toll free 877-222-4185.

Ground Travel: Approximate taxi fare to the Omni Shoreham is \$20-25 each way from Reagan National Airport (DCA) to the Omni Shoreham, and \$55-60 each way from Dulles International Airport (IAD).

4. PROGRAM REGISTRATION:

To register for all programs and events described in this brochure, we encourage you to register online at www.americanbar.org/groups/construction_industry. In order to be included in the list of program attendees, you must register by September 6, 2013. Guest tickets for special events are available for an additional fee. Please see the registration form for price details. Early Bird Registration Deadline: August 19, 2013.

5. ONSITE REGISTRATION:

Onsite registration is available for those persons who missed the registration deadline. If you plan to register at the door, please call the Forum at 312-988-5678 on or before Friday, September 20, 2013, to confirm that space is still available. Failure to call in advance may preclude admission to a sold out conference. On site registrants must pay the registration fees by check, money order, Visa, MasterCard, or American Express. NO registrations will be accepted without payment.

6. TUITION AND SCHOLARSHIP INFORMATION:

Tuition includes admission to the program, welcome reception, continental breakfasts, beverage breaks, luncheon, and course materials. The Forum will be providing program materials on CD-ROM only in effort to help green the environment. Please contact Bridget Miller at Bridget.Miller@americanbar.org for scholarship information.

7. CANCELLATION POLICY:

Registrants who are unable to attend the conference will receive a refund less a \$50 administrative fee if written cancellation is received by September 15, 2013. Cancellations may be faxed to 312-988-5677 or emailed to sharon.oconnell@americanbar.org. No refunds will be granted after September 15, 2013. Substitutions are acceptable, or conference materials will be sent in lieu of a refund after the program. The ABA reserves the right to cancel any programs and assumes no responsibility for personal expenses.

8. CLE CREDIT:

ABA programs ordinarily receive CLE credit in AK, AL, AR, AZ, CA, CO, DE, FL, GA, GU, HI, IA, ID, IL, IN, KS, KY, LA, ME, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, VI, WA, WI, WV, and WY. These states sometimes do not approve a program for credit before the program occurs. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit www.americanbar.org/groups/construction_industry or contact Sharon O'Connell at sharon.oconnell@americanbar.org.

9. MEMBERSHIP:

To encourage registrants to join the ABA Forum on the Construction Industry, the reduced member's tuition rate will be extended to registrants who join the Forum when they register for the conference. Forum membership dues are \$50 for attorneys/associates and \$5 for law students. Membership in the ABA and one Section is a prerequisite to Forum membership.

10. TAX DEDUCTION FOR EDUCATIONAL EXPENSES:

In the United States an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals and lodging expenses [see Treas. Reg. Sec. 1.162-2] *Coughlin v. Commissioner*, 203 F.2d 307 (2nd Cir. 1953.)

11. AMERICANS WITH DISABILITIES ACT:

If special arrangements are required for disabled individuals to attend this program, please contact the Forum in writing by August 25, 2013 at the American Bar Association, 321 N. Clark Street, Chicago, Illinois, 60654. Email: Bridget.Miller@americanbar.org.

12. DRESS:

In keeping with Forum tradition, participants are encouraged to wear business casual attire during the programs and to the special events.

13. FOR THE LATEST PROGRAM INFORMATION:

Please visit the ABA Forum on the Construction Industry's website: www.americanbar.org/groups/construction_industry.



AMERICAN BAR ASSOCIATION

Forum on the Construction Industry, MS 18.2
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www.americanbar.org/groups/construction_industry

PRESORTED
First Class Mail
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SAVE THE DATE:

2014 MIDWINTER MEETING

January 30-31, 2014

The Atlantis Paradise Island, Bahamas

2014 ANNUAL MEETING

April 10-12, 2014

The Roosevelt, New Orleans, LA

