



CONSTRUCTive Talk

Construction Law Committee Newsletter, a committee of



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Pensacola, FL



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CHAIR REPORT

By: Bruce Partington, Esq., Clark Partington, Pensacola, FL

Hello CLCers,

I'm proud to provide you with the first newsletter of my term as President. I first want to thank Sanjay Kurian and all of his predecessors who got the CLC to where it is today. We have an organization and inertia that is the envy of many other committees in the RPPTL Section and elsewhere in the Bar.

I am also honored to be working alongside Brett Henson and Jason Quintero as the co-vice chairs of the CLC. We meet regularly to make plans and organ-

ize what's coming up. Brett has shown a particular skill at anticipating the "next thing"



that needs to happen and just doing it. We're a good team and I deeply appreciate their partnership in this endeavor.

As you know, we've been trying to find ways to get members from the CLC more involved at the Section level. This has led already to Brett taking a leadership role at the December Executive Council meeting for the forum discussion on minimum standards for board certification, and obtaining a great speaker for what has become a full Section event at the Sunseeker meeting in late January 2026. We are looking at opportunities to work with other committees as well. I would encourage those of you who would like to become

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Articles and Submissions:

Here at CONSTRUCTive Talk, we are always looking for timely articles, news and announcements relevant to Construction Law and the Construction Law Committee. If you have an article, an idea for an article, news or other information that you think would be of interest to Construction Law Committee members, please contact: Peter J. Kapsales, Esq. at pkapsales@milnelawgroup.com, Hilary Morgan, Esq. at hmorgan@taftlaw.com, or Clark S. Girges, Esq. at cgirges@carltonfields.com

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more involved at the Section level to apply to become “ALMs” (at large members) when applications open for that. Younger lawyers can also have opportunities to be a Section “Fellow.” You can find information on both of those easily if you login to the Section website. If you’re applying, please let Brett, Jason, and me know.

The article on writing in this newsletter has an interesting back-story that’s worth sharing because it speaks to the friendships and collegiality that so frequently develop within this Committee and the construction bar generally. I’ve known Brian Stayton for a long time from a case 20+ years ago. We became friendly during the case but saw each other infrequently after that. We reconnected at a CLI a few years ago, and at the last one, we were talking about young lawyers and good writing, and I mentioned that I had an informal list of things I would give young lawyers working with me about their writing. Brian asked to see it, so I sent it to him. He reformatted it a bit, added some great tips of his own, and since we’ve both become older, decided to make it lightly curmudgeonly. We agree on nearly everything, disagree on a few things (I don’t like full justification, for example, because it’s harder to read), and refined it.

We weren’t quite sure what to do with it, so I shared it with Brett and Jason who thought it would be fitting for our newsletter. But not only was it great to reconnect with Brian at our (and really our Section’s) flagship seminar, but the general culture of collegiality of the construction bar in Florida encouraged us to do it. So the lesson of the article is as much about writing tips as it is about committee and bar’s culture and the importance of developing relationships in what is so often a very tough job. I’m very grateful to Brian for working on this article, and for exemplifying that collegiality.

I want to thank our subcommittees. They’re all doing great work in their respective areas, and I would encourage those of you who aren’t that involved in a committee (or committees) to think about reaching out to the chairs and getting more involved. It’s a great way not only to do important substantive work, but also to develop relationships with other members of the CLC.

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News**

Finally, I particularly appreciate the work of our newsletter subcommittee for assembling this edition, and look forward to see you at the next CLC meeting, if not at an Executive Council meeting. I hope you and your families have a wonderful holiday season.

TIPS FOR LEGAL WRITING FROM TWO CURMUDGEONS

Bruce Partington and Brian F. Stayton

bpartington@clarkpartington.com and brian@staytonlawgroup.com

There are many books and articles about writing. If you've never read Strunk and White's, *The Elements of Style*, which was first written in 1918, you missed something important in your education. More recently, Bryan Garner and Justice Antonin Scalia published *Making Your Case: The Art of Persuading Judges* (West Group, 2008), which couples writing guidelines with recommendations for oral arguments.

Based on our combined seventy-one years of litigation, we want to share some of our basic tips for legal formatting, structure, and effective written advocacy:

- Avoid using party designations (Plaintiff, Defendant, etc.) other than in the introductory paragraph. Names are better and easier to remember for the reader. Consider roles too – e.g. “Owner,” “Contractor,” etc. The last thing you should call a party is, “Defendant, Counterclaimant, and Third-Party Plaintiff,” except in the introduction.
- In any motion or brief, identify exactly the relief requested in the first page. Use the first paragraph to identify the parties, but the second paragraph needs to summarize the relief sought and why it should be granted. (“This Motion seeks dismissal of the Complaint because the face of the Complaint shows that the statute of limitations has expired.”) Judges are time-constrained and may only briefly review the remainder of your motion, so get the point across first. If you cannot distill your requested relief into the first page, you have not thought through your motion.

- It can also be useful to have an introductory section that provides the court with the proper standard of review.
- In letters and emails, if you are giving directions, instructions, or requirements, separate each by indented bullet-points. Clients (and adverse parties) need to be able to cross-off each requirement as completed, with little or no clarification needed.
- In contracts and settlement agreements, define the parties (ABC Construction Corporation Solutions, Inc., or “ABC Construction”), then use the abbreviation consistently.
- Only one space after periods is necessary. This is generally more a problem for older people who learned on typewriters. Nothing wrong with letting Word convert two spaces into a period automatically.
- Avoid ALL CAPS BECAUSE IT IS LIKE SCREAMING AT THE READER. The only place that’s tolerated is in the case style and pleading names. It should not be used in point headings or section headings.
- Have a consistent outline style. Major sections with corresponding pleading names in **CAPITALS** (maybe, see previous point), bolded, underlined (maybe), and centered. (**ANSWER, AFFIRMATIVE DEFENSES.**) Bolded, underlined (maybe), and centered subsections. (**General Allegations, Count I, First Affirmative Defense** or perhaps **General Allegations, Count I, etc.**)
- In the main text of the document, don't underline much, if at all (which is why the prior point said “(maybe).” Sometimes underlining, bold-face, or italics is okay for emphasis, but usage should be the exception, not the rule. Underlining is somewhat of a remnant of typewriters. But keep whatever device you use for emphasis consistent throughout—if you use italicized bold font for emphasis, always and only use that.
- Although the “Oxford comma” may be optional in other contexts, it is mandatory in legal writing. (If you don’t know what the Oxford comma is, look at the two previous points.)
- *Italics* for case names in citations, per Rule 9.800, Florida Rules of Appellate Procedure: *Fenelon v. State*, 504 So.2d 292 (Fla. 1982). *Buncayo v. Dribin*, 533 So.2d 935 (Fla. 3d DCA 1988).

- Point headings should be written with capitalization like in normal text, so not, for example: “The Court Should Dismiss This Action Because The Complaint Fails to State a Cause of Action.”
- Don't get particularly worked up about designating sections with Roman or Arabic numbers or letters. But if something has multiple sections and subsections where you need to show priorities, then the traditional outline hierarchy is best. If you are responding to something, consider using the same designations as the document to which you are responding.
- It's acceptable to start a sentence with a conjunction. But avoid ending sentence with one if possible.
- Moderate use of adjectives and adverbs is fine but avoid overuse and hyperbole.
- Avoid using “same” or “the same” as nouns. It's clearer just to call something what it is. Don't turn nouns into verbs or adjectives.
- If you use a pronoun, the precedent should be immediately obvious. It's better to limit the use of pronouns altogether.
- Avoid using legalisms like “heretofore” or “hereinafter” or even “pursuant to”; “above,” “below,” or “as provided in” work just fine and are how normal people talk. Readers “trip” over multi-syllabic words because they require the reader to slow down and focus – e.g., “heretofore” or “hereinafter” require the reader to focus on the differences in those words.
- Avoid passive voice, but sometimes it is inescapable. Sometimes it is even useful.
- Clients, however, do not mind the rhetorical flourish of a good *ad damnum* paragraph. (... damages, interest, costs, along with such other and further relief as this Court deems just and proper.)
- **Never** use “and/or.” It is, by definition, ambiguous and displays to all the world that you don't know if you intend one or both. The Florida Supreme Court has condemned its use as “one of those inexcusable barbarisms which was sired by indolence and dammed by indifference.” *Cochrane v. Florida East Coast Rwy. Co.*, 107 Fla. 431, 145 So. 217, 218-19 (1932) (which continues to be cited, most recently in *Croom v. State*, 36 So. 3d 707, 710 (Fla. 1st DCA 2010)).

- Symbols are only used in citations. In text, use words. Your mind does not think “¶,” it thinks, “paragraph.” Same with “§.”
- When referring to things that have subsections, etc., work within a recognized hierarchy: article (or chapter), section, sub-section, paragraph, sub-paragraph, for clarity. Most things don't go deeper than that, but sub-subparagraph would be the next one down. Look at the “Numbering system” paragraph in the Preface of any bound volume of Florida Statutes to make sure you have the right designation when referring to statutes.
- Unless the sections of a filing have more than three levels, use indents (left only) for section or point headings by progressive half-inches. So "I" would be indented 0.5, "A" would be at 1.0, "1" would be at 1.5. If it gets deeper than that, then you should probably use quarter-inch increments from the outset or it looks weird.
- Double-space in all legal submissions. Indent and single space all lengthy quotations (over 50 words) from both margins by one-half inch, not an inch. But try to avoid lengthy quotations if possible; paraphrasing in the overall text flow is often easier to read and more effective. Think about whether everything you are quoting is necessary. Use ellipses to get rid of the chaff.
- Fonts.... If your firm has an established font, use it. Times New Roman and Arial are boring and generic. The font prescribed by the appellate rules is fine. (Bookman Old Style). The Middle District of Florida provides five options. (Times New Roman, Book Antiqua, Calisto MT, Century Schoolbook, Georgia, and Palatino.) One of us spent a while trying to figure out something that looked good both on screen and on paper and ultimately landed on Book Antiqua, the other on Bookman Old Style.
- Use the same font in everything you write: pleadings, motions, notices, liens, letters, and emails. The size of the font can change, but everything you or your firm produces should be consistent.
- In every document, make sure the font size remains consistent. If you use Bookman Old Style in 11-point font, make sure it's the same in every page. Page numbers should match the text, both in font and size.

- Footnotes in a smaller font are hard to read, even if that is the default set-up in most word processing applications. They are easier to read if they are the same font and size, with a first line indent of a half-inch and a half-line (6 point) between them.
- Don't leave one line of text or a heading alone at the bottom of a page, use the window/orphan control to avoid this.
- Finally, differing points of view regarding justification:
 - One curmudgeon says: Full justification. You've been reading that way in books and magazines for decades, it looks better.
 - The other curmudgeon says left justification because it's easier to read for several reasons including uniform spacing between words and maintaining one's place in the document, and readability should be the goal of writing. Also, word processing applications are not as adept as publication/typesetting applications at managing this. (So we alternated bullet points).

These are our writing tips that we have developed over a long time, all with the goal to make our writing more readable. Somewhat curmudgeonly, we know.... But we also think this makes one's writing more lively, persuasive, and readable.

In-House Corner



David J. Ehrlich, Esq.
Coastal Construction
Tampa, FL



D. Joseph Darr, Esq.
Brasfield & Gorrie, LLC
Winter Park, FL

The In-House Counsel Subcommittee was recently formed in June 2024, under the umbrella of the Construction Law Committee (CLC). Since then, it has attracted the membership of forty-five (45) Florida in-house counsel practicing in the construction field, including owners/developers, contractors, subcontractors, designers, and insurance/surety providers. The Subcommittee's membership is exclusive to in-house counsel, with the intent of creating a forum where ideas and best practices can be openly exchanged.

The Subcommittee continued its bi-monthly meeting schedule on June 3, 2025, at which one of its own, Dan Wireman (Cleveland Construction, Naples, FL) presented on *Litigating Cases In-House*. While all in-house legal departments are looking for cost savings, this presentation offered a non-traditional approach that may work for some. The keys are selectively choosing which cases can be litigated in-house and ensuring proper staffing of the in-house team. We also learned about best practices, such as controlling the ESI process in-house and partnering with outside counsel (as co-counsel) even for those matters that may be farmed out. This balance allows in-house counsel to maximize both time and cost efficiencies, based off their intimate knowledge of the applicable corporate systems. The Subcommittee met again on July 29, 2025, at which Iman Hyder-Eliz and Darian Martin (American Arbitration Association, Miami, FL) presented on *Drafting Effective Alternative Dispute Resolution Clauses*. These presenters shared the AAA's strong desire to truly partner and support attorneys in the construction mediation and arbitration space, including inviting present or future feedback. The highlight of the presentation was the sharing of the AAA ClauseBuilder tool, which provides multiple options (recently adding AI) to draft a comprehensive and tailored arbitration provision. ClauseBuilder is available at no cost on the AAA's website. Finally, the Subcommittee met on September 30, 2025, at which Denise Hammond (Hammond Law, Orlando, FL) presented on *Cost Effective Arbitration Strategies*. While any form of binding dispute resolution can be expensive, we learned of some best practices that dovetailed nicely with the immediately prior AAA presentation. These included proactively negotiating limited discovery, limiting the number of panelists, and efficient case management.

The Subcommittee continues to accept new members. If personally interested or you know an in-house colleague who may be, please email Joe Darr (jdarr@brasfieldgorrie.com) or Davide Ehrlich (dehrlich@coastalconstruction.com).

Pro Bono Update



Pamela Holcombe, Esq.
Anastasia Law, P.L.
St. Augustine, FL



Hardy Roberts, Esq.
Carey, O'Malley, Whitaker,
Mueller, Roberts & Smith,
P.A.
Tampa, FL



The Construction Law Committee is looking for pro bono volunteer lawyers for the follow two construction matters. If interested, please reach out to Pamela and Hardy.

1. The applicant is a 90-year-old homeowner who hired a contractor to repair a roof leak. The contractor persuaded him to replace the entire roof instead. Applicant paid primarily in cash, has itemized receipts but no written contract. Dispute has arisen over payment: contractor claims approx. \$7,500 remains owed (total \$16,000), while applicant contends only \$1,500 is due. The contractor has not completed the work (roof remains unpainted, gutters not replaced) and charged for additional work that was never performed. On August 15, 2025, the contractor recorded a lien for \$7,500 against the property. Applicant was advised regarding lien timelines, including the option to file a notice of contest to shorten enforcement. He seeks pro bono assistance to contest the lien and protect his property, given his advanced age and limited means .
2. Central Florida small business hired for a leather furnishings project in a Sunny Isles condo. The design company that contracted the work is behind on payments, has ignored change orders while insisting the work continue, and underpaid on the last installment. Client seeks advice on remedies under Florida construction lien law. (*Please note this is a limited scope engagement where the client needs advice and counseling only*).

Last year, the CLC helped with 8-10 pro bono matters through the Subcommittee. We aim to significantly increase this as we go forward. While those who are willing and able to take a pro bono case are greatly appreciated, we also need folks to assist by serving as liaisons with local Legal Aid organizations, helping with outreach and education, and assist-

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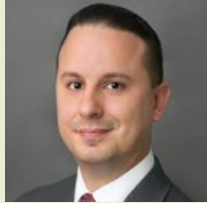
ing with subcommittee administrative and organizational work. If you are will to help or serve as a liaison with a local aid or pro bono program, please email the Sub-Committee Co-Chairs, Pamela Holcombe and Hardy Roberts at pamela@anastasiaLaw.net and hroberts@careyomalley.com.

Submissions

Do you have an article, case update, or topic you would like to see in CONSTRUCTive Talk? Submit your article, note, or idea to:

pkapsales@milnelawgroup.com,
hmorgan@taftlawcom or
cgirges@carltonfields.com

Editor's Corner



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Construction Law Committee Meetings

Join us for our upcoming Construction Law Committee meetings. Benefits of the meetings include 1 hour of CLE each meeting, a timely update on developing case law, statutes and administrative rulings, and informative reports from our subcommittees.

The CLC meetings occur the second Monday of every month beginning promptly at 11:30 a.m. EST. To join, please use the Zoom Link Below:

Zoom Link Join Zoom Meeting https://link.edgepilot.com/s/c9969b60/ogXULzzto0WQN6lKSye_KA?u=https://us02web.zoom.us/j/87222588796?pwd=yGmwVSJ8UAcqNFjORKNNIAcIl0Lq24.1

Meeting ID: 872 2258 8796

Passcode: 917036

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Subcommittee News

Get On Board!

Interested in joining the Construction Law Committee?

It's as easy as 1, 2, 3:

1. Become a member of the Florida Bar.
2. Join the Real Property Probate and Trust Law Section.
3. Email Bruce Partington, Brett Henson, or Jason Quintero bpartington@clarkpartington.com, bhenson@carltonfields.com, or jquintero@carltonfields.com, advising that you would like to join the CLC and providing your contact information.

Interested in getting involved? Contact one of the persons listed below:

ABA Forum on Construction Law

Tony Lehman
alehman@hlpwlaw.com

The ABA Forum Fall Meeting took place on September 3–5, 2024, in Louisville, Kentucky. A new publication on owner representation, “Representation of a Construction Owner,” is now available and was co-written/edited by our own Sanjay Kurian. Additionally, the regional meetings took place on November 13–14, 2025, and included an Orlando meeting. Those who attended received a copy of “Sticks and Bricks.”

ADR

Reese Henderson, Bryan Rendzio
reese.henderson@gray-robinson.com, brendzio@milesadr.com

The ADR Subcommittee is continuing to expand and to provide ongoing updates for the CLC group. We are still seeking more members who actively want to assist with our ADR section. We would also encourage any interested members to submit an article to the CLC on any ADR-related topic.

Certification Exam

Bruce Alexander, Dara Lindquist
bruce@bgalawadr.com, dlindquist@carltonfields.com

The Construction Law Board Certification application cycle recently concluded, having run from September 1 to October 31, 2025. The 2026 Construction Law Board Certification exam will be administered on Thursday, May 14, 2026. For lawyers seeking recertification (i.e., 1995, 2000, 2005, 2010, 2015, or 2020), the deadline to submit recertification applications was July 31, 2025.

*(Continued from page 12)***Certification Review Course***Scott Pence, Greg Hutt**spence@carltonfields.com, ghutt@trenam.com*

The Construction Law Certification Review Course will be held on March 5 to 7, 2026 at the JW Marriott—Grande Lakes, Orlando, Florida.

Construction Law Institute*Brad Weiss, Trevor Arnold, Haley Maple, Nikki Bhavsar**brad@bmwlawyers.net, trevor.arnold@gray-robinson.com, hmaple@ksmlawyers.com, nikki.bhavsar@udx.com*

Save the date! The 2026 Construction Law Institute will take place from March 5th – 7th at the JW Marriott Grande Lakes in Orlando, Florida. The CLI subcommittee has issued its call for speakers and is currently finalizing the lineup of presenters and topics for next year's event. In addition, the subcommittee is actively exploring sponsorship opportunities with leading industry groups and law firms .

Construction Litigation*Jason Lambert, Michael Feinberg**Jason.Lambert@hwhlaw.com, michael.feinberg@ansbacher.net*

The Litigation Subcommittee meets the first Thursday of every month at 11:00am via Zoom. The Subcommittee examines recent case law developments and procedural issues of interest to construction litigators. To join the Subcommittee Zoom call or read recent case law updates, please click [here](#).

Newsletter*Peter Kapsales, Hilary Morgan, Clark S. Girges**pkapsales@milnelawgroup.com, hmorgan@taftlaw.com, cgirges@carltonfields.com*

The Newsletter Subcommittee is seeking submissions for the CONSTRUCTive Talk Newsletter for 2026. Please submit shorter form articles for inclusion in an upcoming edition to Peter, Hilary, and Clark which should be 1000 words or less.

Pro Bono*Pam Holcombe, Hardy Roberts**pamela@anastasiaalaw.net, hroberts@careyomalley.com*

There are many ways, both small and large, for CLC members to assist the provision of pro bono services. In addition to taking a pro bono case, we also need folks to assist as liaisons to local Legal Aid organizations, helping with outreach and education, and assisting with subcommittee administrative and organizational work. Please contact Pamela or Hardy with your offers to help or if you are interested in attending the next CLC Pro bono meeting.

*(Continued from page 13)***Publications***Andrew Foti, Michael Rothfeldt**afoti@stearnsweaver.com, mrothfeldt@carltonfields.com*

The Publications Subcommittee is seeking submissions for ActionLine for the 2026 bar year. Articles should be 1000-3000 words in length. The subcommittee is also seeking submissions for the Florida Bar Journal on behalf of the section. These submissions should be 3000-5000 words in length. Please reach out to Andrew and Michael if you are interested.

Construction Regulation*James Gonzalez, Chris Cobb**jgonzalez@cobbgonzalez.com, ccobb@cobbgonzalez.com*

A few years ago, the Florida Legislature passed a bill aimed at eliminating specialty construction licensing at the local level. The act was supposed to go into effect on July 1, 2023 but was extended a couple of times to July 1, 2025. The bill required the CILB to create voluntary categories of specialty licenses such as: (a) Structural Aluminum or Screen Enclosures; (b) Structural Masonry; (c) Structural Steel; (d) Window & Door Installation; (e) Plaster and Lath; (f) Structural Carpentry; (g) Marine Seawall; (h) Marine Bulkhead; (i) Marine Dock; and (j) Marine Pile Driving, among others. For a complete list, see 61G4-15.100, F.A.C. on Certified Specialty Contractors. The committee will monitor the affect of this legislation on construction regulation activities .

Construction Transactions*Claramargaret Groover, Alex Leon**cgroover@beckerlawyers.com, aleon@haberlaw.com*

The Construction Transactions Subcommittee provides practical resources to construction transactional attorneys to refer to when drafting, updating, or customizing construction contracts.

Contractor's University*David Zulian, James Barlow**dazulian@napleslaw.com, jbarlow@careyomalley.com*

Contractor's University will be setting up regional workshops which offer CEU credit through practical seminars for contractors across the state on various topics such as lien law and contract clause tips.

(Continued from page 14)

Construction Legislation

Sean Mickley, Nick Elder

smickley@whitebirdlaw.com, nelder@cobbgonzalez.com

In-House Counsel

David Ehrlich, Joe Darr

dehrlich@coastalconstruction.com, jdarr@brasfieldgorrie.com

The In-House Counsel Subcommittee is exclusively comprised of Florida in-house counsel practicing in the construction field, including owners/developers, contractors, subcontractors, designers, and insurance/surety providers. See the *In-House Corner* column for further updates and how to join .

Membership

David Zulian, Mark Smith

dazulian@napleslaw.com, msmith@careyomalley.com

The CLC's membership includes 555 members. If you are aware of a RPPTL Section member who would like to become a member of the CLC, please contact David and Mark.

Government Contracts

Lisa Colon, Belinda Bacon

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The Government Contracts subcommittee meets the fourth Friday of the month at noon. The subcommittee welcomes members who have experience in the field of government construction contracts, and the work of the subcommittee focuses on tracking case law as well as regulatory and administrative changes and cases that affect government contracting, including small business and MBE/WBE programs.

Website

Jack Taylor, Klarika Caplano

jack.taylor@forthepeople.com, klarika@coats-schmidt.com

The CLC webpage can be found [here](#) and is regularly updated with monthly meeting minutes and agendas, CLE materials and course numbers for credit, case law and legislative updates, and subcommittee information.

CLE

Sean Sullivan, Jill Dutmers, Anya Pardy
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apardy@williamsparker.com

The CLE Subcommittee hosts a monthly free CLE for Construction Law Certification credit on the second Monday of every month. Please contact Sean, Jill, or Anya if you would like to present a topic in 2026.

On December 9, 2025, The Construction Law Committee of the RPPTL Section of the Florida Bar is presented "Bandklayder - A Major Shift in Calculating Construction Damages or No Big Deal?" The presentation included an interactive discussion on the recent trilogy of cases requiring proof of construction damages from the "date of breach."

Thank you to our speakers Todd Demetriades and David Salazar, along with our program chair Anya Pardy, and CLE subcommittee co-chairs Sean P. Sullivan and Jill Dutmers for their efforts in putting this program together

Bandklayder - A Major Shift in Calculating Construction Damages or No Big Deal?

REAL PROPERTY, PROBATE AND TRUST LAW SECTION
OF THE FLORIDA BAR

Speakers

David Salazar
Miami

Todd Demetriades
Orlando