

# 3<sup>rd</sup> Construction Claims

Avoiding and mitigating complex construction claims

*Workshop Included: Techniques for Negotiating and Resolving Disputes*

**participating organizations**

Aecon Group Inc.  
Aon Reed Stenhouse Inc.  
Borden Ladner Gervais LLP  
City of London  
Giffin Koerth Forensic Engineering

Goodmans LLP  
Gowling Lafleur Henderson LLP  
Osler, Hoskin & Harcourt LLP  
Revay and Associates Limited

**who should attend**

Owners/Developers  
General Contractors  
Subcontractors and Suppliers  
Construction Project Managers/Coordinators  
Architects, Design Professionals & Engineers  
Land Use Planners  
Government Representatives  
School Board Representatives

Financial Institutions  
Insurance/Surety  
Bond Company Representatives  
Municipal Environmental and Real Estate Lawyers  
Construction Finance Professionals  
In-House Counsel  
Construction Consultants

**course highlights**

- Protecting yourself against construction defect claims
- Dealing with construction liens
- Construction arbitration: avoiding potential problems with standard contract clauses
- Capacity, responsibility and claims: the latest on surety bonds and insurance markets
- What not to do when conducting an arbitration
- How to recognize and safeguard against unfair practices and improper claims in delay claims and change orders



**Course Leader**  
Sharon C. Vogel,  
Borden Ladner  
Gervais LLP



Ron Koerth,  
Giffin Koerth  
Forensic  
Engineering



Neil S. Abbott,  
Gowling Lafleur  
Henderson LLP



Maurice Audet,  
Aon Reed  
Stenhouse Inc.



Kenneth W.  
Crofoot,  
Goodmans LLP



Paul Ivanoff,  
Osler, Hoskin &  
Harcourt LLP



Joy Jackson,  
City of London



Matthew  
Nicholas,  
Revay and As-  
sociates Limited

as well as:  
Rino Rotundo,  
Aecon Group  
Inc.

## FACULTY

### COURSE LEADER

#### SHARON C. VOGEL

Sharon Vogel is a partner in the Construction, Engineering, Surety and Fidelity Practice Group of **Borden Ladner Gervais LLP**, focused on the litigation, arbitration and mediation of construction claims, construction liens, trust claims, surety bond claims, construction insurance claims and architects' & engineers' errors & omissions.

### CO-LECTURERS

#### RON KOERTH

Ron Koerth, P.Eng., MBA, is a founding partner of **Giffin Koerth Forensic Engineering** and engages in forensic engineering investigations. He was previously directly involved in construction, working as a contractor and an owner's representative.

#### NEIL S. ABBOTT

Neil Abbott is a partner at **Gowling Lafleur Henderson LLP**. He chairs the Recovery Services department specializing in asset and debt recovery and is also the National Chair of the Gowlings Construction Group.

#### MAURICE AUDET

Maurice Audet is Senior Vice President and Regional Resource Leader, Risk Research & Solutions at **Aon Reed Stenhouse Inc.** He has extensive account experience in real estate, construction and manufacturing.

#### KENNETH W. CROFOOT

Ken Crofoot is a partner at **Goodmans LLP** practicing construction and commercial litigation. His practice has involved handling large construction claims on behalf of both owners and contractors in a number of different forums.

#### PAUL IVANOFF

Paul Ivanoff is a partner at **Osler, Hoskin & Harcourt LLP**. His practice involves the litigation, arbitration and mediation of disputes arising out of construction and infrastructure projects.

#### JOY JACKSON

Joy Jackson, FCIP, RF is risk manager with the **City of London**, specializing in operational risk. Joy has published three books, plus the guide "You Can Reduce Contract Risk."

#### MATTHEW NICHOLAS

Matthew Nicholas B.Sc (BE), M.Eng., PSP, **Re-vay and Associates Limited**, has extensive experience in project planning and control, and claims analysis and management.

#### RINO ROTUNDO

Rino Rotundo is a Commercial Officer at **Aecon Group Inc.** He is an engineer with extensive experience in construction claims.

## COURSE PROGRAM

### TYPES OF CLAIMS: DECIDING WHICH REMEDY IS RIGHT UNDER THE CIRCUMSTANCES

Industry efforts to reduce the number of construction claims have been unsuccessful in most sectors. This session will help to increase your familiarity with the top eight types of claims so that you can spot potential claims situations and select the most appropriate way to resolve them.

- The hit list: the most frequently encountered construction claims
- Initial claim evaluation: analysis and assessment
- Techniques for keeping the situation from escalating too far
- Best practices in selecting solutions to resolve claims situations efficiently
- Tips for avoiding claims before they happen

### DISPUTE EARLY WARNINGS

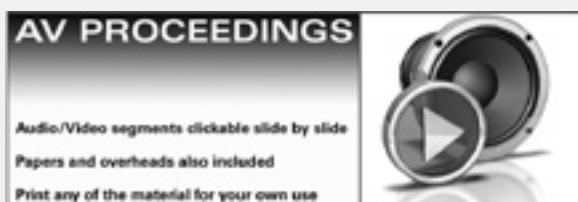
The best, experienced project managers can spot the warning signs of potential claims and difficulties involving extra work, delays & deficiencies before they occur. Sometimes that experience is gained by performing an autopsy on a construction claim to see what happened, what was missed and what could have been done differently. This case study presentation will examine how you can be more effective and proactive in dealing with and minimizing the impacts of construction claims.

- Leveraging the project schedule to spot the warning signs
- Identifying other telltale indicators of potential claims
- Ways to minimize exposure if claims are made

### SUPPLEMENTARY COURSE MATERIAL

Federated Press is now providing delegates with access to an innovative new database containing at least 25 interactive multimedia presentations by leading experts and approximately 20 hours of lectures on the topics covered by this course, including all slides and speakers' papers. See the list of presentations on page 4.

Delegates will also receive a trial subscription to the Real Estate Channel, a much broader resource representing hundreds of hours of interactive multimedia lectures on leading edge Real Estate topics as delivered at our many recent Real Estate conferences and courses.



## PRACTICAL STRATEGIES FOR LITIGATION PREPARATION

The better prepared you are for litigation, the stronger and better informed your position to negotiate a settlement before delays and costs become excessive will be. This session will offer proactive tips for dealing with common claims and for minimizing legal costs.

- Identifying the essentials required for litigation preparation
- Reasons for identifying expert witnesses early in the process
- Understanding document disclosure requirements and exceptions
- Creating and planning strategies for the plan of attack
- Approaches for strengthening your position in the settlement process

## DOCUMENTING A CONSTRUCTION CLAIM

Whether you are filing or defending against a construction claim, you need to follow the paper trail to make a convincing argument. This presentation will discuss documentation and record keeping best practices that will play a huge role in resolving a construction claim.

- Making best use charts and schedules
- Establishing the chronology of events from multiple sources
- Documenting the impact of contemplated change notices and change orders
- E-discovery: tapping into electronic documentation to make your case
- Hidden gems that can be found in notes, meeting minutes and on-site reports
- Case examples of how the documents help to win the decision

## DEALING WITH IMPACT: LOSS OF PRODUCTIVITY CLAIMS

Measuring and proving loss of productivity due to construction project changes is difficult, but this has not slowed the number of claims being filed. This presentation will provide you with essential information to help you assess and deal with loss of productivity claims.

- Identifying the core productivity and performance indicators
- Measuring performance against the project baseline
- Tools and methods for measuring loss of productivity
- Measuring and comparing planned versus actual productivity
- Effective practices for managing loss of productivity risk

## LATEST TACTICS FOR DEALING WITH CHANGE ORDER, DELAY AND ACCELERATION CLAIMS

Like it or not, the reality is that you can add construction change orders to the short list of things of which you can be certain in life. This session will outline the most efficient and effective approaches for dealing with change order, delay and acceleration claims.

- Types of changes most likely to trigger claims on construction projects
- Assessing the scope and schedule implications of changes
- Identifying causes and quantifying their impact
- Meeting standards of proof for delay claims
- Defining activity sequencing and interdependencies
- Techniques for proving acceleration claims and damages

## INSURANCE COVERAGE ISSUES IN CONSTRUCTION CLAIMS

Understanding the current insurance market, coverage options and policy exclusions is essential for your protection, as mistakes here can have disastrous consequences for owners and contractors. This discussion details the current state of the market and how to maintain sufficient coverage.

- Understanding the latest trends and issues in insurance underwriting
- What you need to know to get the coverage you need
- Clarifying who's responsible for what
- Critical advice for dealing with denial of coverage after the contract is awarded
- Practical strategies for managing your risks

## THE LATEST ON SURETY BONDS

An increasing number of large private projects now require surety bonds, which are mandatory for public projects. This discussion details how to overcome the challenges in the current tightened surety bond market and obtain the much-needed protection for your construction projects.

- Overcoming challenges in obtaining sufficient capacity
- Practical suggestions for dealing with lack of capacity
- Other ways to obtain equivalent protection
- How the latest underwriting trends will affect the construction industry
- Necessary steps to follow to claim under surety bonds

## DEALING WITH CONSTRUCTION LIENS

Unforeseen problems in a construction project can often interrupt or block the flow of money down the construction pyramid. Construction liens are one way of dealing with lack of payment issues. Indeed, being able to react quickly with a lien claim can often mean the difference between obtaining payment and incurring substantial loss. This discussion details practical tips on conducting a lien action.

- An update on both trust claims and construction liens
- Timing for asserting a lien claim
- Retaining and releasing holdback
- Liability for breach of trust

## WORKSHOP

### TECHNIQUES FOR NEGOTIATING AND RESOLVING DISPUTES

There is more than one way to help you to quickly and cost-effectively resolve construction disputes. This interactive workshop will walk you through the negotiating options that can get results and keep you from permanently damaging ongoing working relationships.

- Top alternative dispute resolution options
- Interest-based negotiations in construction disputes
- Tips for increasing your effectiveness in the ADR process
- What the trend toward dispute resolution boards means to you
- Using expert opinions to your best advantage
- The latest developments in construction dispute arbitration
- Dos and don'ts of successful mediation

## MULTIMEDIA PRESENTATIONS

Your registration includes an interactive multimedia database comprising the following presentations from recent Federated Press courses and conferences. They are presented in their entirety with complete audio or video and accompanying slides. You may also purchase the multimedia proceedings of the course which will be available on CD-ROM 60 days after the course.

### Liability of Trust Provisions

Anna M. Esposito,  
Pallett Valo LLP

### Achieving Successful Resolutions in Arbitration and Mediation of Construction Defect Cases

Jack B. Berkow,  
Berkow, Cohen LLP

### Construction Arbitration: Avoiding Potential Problems with Standard Contract Clauses

Donald E. Short,  
Fasken Martineau DuMoulin LLP

### Emerging Environmental Liabilities

David Crocker,  
Davis LLP

### Assumption of Risk: Who is on the Hook for What

Geza R. Banfai,  
Blaney McMurtry LLP

### Avoiding Disputes: How to Resolve Construction Claims

Paul Sandori & Matthew Nicholas,  
Revy and Associates Limited

### Protecting Yourself Against Construction Defect Claims

Andrew Gurlesky,  
McLaughlin & Associates

### Capacity, Responsibility and Claims: The Latest in Surety Bonds

Stuart Detsky,  
Travelers Guarantee Company of Canada

### Trends in the Availability of Capital for Construction

Gary Morrison,

### Risks Associated with Pre-sale Contracts

Brian D. MacKay,  
Davis LLP

### Managing the Legal Aspects of Financing

Ian E. MacRae,  
MacLeod Dixon

### Creating a Risk Identification Checklist

Joseph Cosentino,  
Goodmans LLP

### Mitigating Risks in Construction Costs & Risk Prevention and Response Planning in Project Management

Fred J. Matthews,  
Christie Saccucci Matthews

### Managing the Surety Bond Process

Steve Muxlow,  
Surety Association of Canada

### Risk Management in International Construction Projects

L. Brian Swartz,  
Aecon Group Inc.

### Cross-Border Mortgage Lending into Canada

Thomas von Hahn,  
Blake, Cassels & Graydon LLP

### Managing Risk and Mastering Due Diligence

Brenda Hebert,  
Stikeman Elliott LLP

### Construction Loans

Ehud Estreicher,  
WildWood Capital Inc.

### Mitigating Risk in Construction Financing: The Lender's Perspective

Sabrina A. Gherbaz,  
Torys LLP

### Minimizing Green Construction Risk

Brendan D. Bowles,  
Glaholt LLP

### Managing Risk in the Bidding and Tendering Process

Glenn W. Ackerley,  
WeirFoulds LLP

### Using Risk Management Tools in Construction Finance Negotiations

David V. Bowcott,  
Aon Reed Stenhouse Inc.

### The New Rules of Procedure in Ontario

David I. Bristow, Q.C.,  
Team Resolution

### A Practical Approach to Allocating Construction Risk

Richard Wong,  
Osler, Hoskin & Harcourt LLP

### Dealing with Construction Liens

Glenn Grenier,  
Lang Michener LLP

**Registration:** To reserve your place, call Federated Press toll-free at 1-800-363-0722. In Toronto, call (416) 665-6868 or fax to (416) 665-7733. Then mail your payment along with the registration form. Places are limited. Your reservation will be confirmed before the course.

**Location:** Metropolitan Hotel, 108 Chestnut Street, Toronto, Ontario, M5G 1R3

**Conditions:** Registration covers attendance for one person, the supplementary course material as described in this document, lunch on both days, morning coffee on both days and refreshments during all breaks. The proceedings of the course will be captured on audio or video. Multimedia proceedings with all slides and handouts can be purchased separately on a CD-ROM which will also include the course material.

**Time:** This course is a two-day event. Registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at 4:00 p.m.

**Cancellation:** Please note that non-attendance at the course does not entitle the registrant to a refund. In the event that a registrant becomes unable to attend following the deadline for cancellation, a substitute attendee may be delegated. Please notify Federated Press of any changes as soon as possible. Federated Press assumes no liability for changes in program content or speakers. A full refund of the attendance fee will be provided upon cancellation in writing received prior to January 14, 2011. No refunds will be issued after this date. Please note that a 15% service charge will be held in case of a cancellation.

**Discounts:** Federated Press has special team discounts. Groups of 3 or more from the same organization receive 15%. For larger groups please call.

Payment must be received prior to January 20, 2011

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## TO REGISTER FOR CONSTRUCTION CLAIMS

Name \_\_\_\_\_  
Title \_\_\_\_\_ Department \_\_\_\_\_  
Approving Manager Name \_\_\_\_\_  
Approving Manager Title \_\_\_\_\_  
Organization \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ Province \_\_\_\_\_ Postal Code \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ e-mail \_\_\_\_\_  
Please bill my credit card:  AMEX  VISA  Mastercard  
# \_\_\_\_\_ Expiration date: \_\_\_\_ / \_\_\_\_  
Signature: \_\_\_\_\_  
Payment enclosed:  Please invoice. PO Number: \_\_\_\_\_

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## REGISTRATION COSTS

NUMBER OF PARTICIPANTS:   
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\$1975 + \$175 = \$2150  
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Proceedings CD-ROM will be available 60 days  
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