3rd 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

as well as:

Rino Rotundo,
Aecon Group Inc.
COURSE LEADER

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

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, Revary 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.

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.

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.

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
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, Revay and Associates Limited

Protecting Yourself Against Construction Defect Claims
Andrew Gurliesky, McLauchlin & 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
Creating a Risk Identification Checklist
Joseph Cosentino, Goodmans LLP
Managing Risk and Mastering Due Diligence
Brenda Hebert, Stikeman Elliott LLP

Construction Loans
Ehud Estreich, WildWood Capital Inc.

Mitigating Risk in Construction Financing: The Lender’s Perspective
Sabrina A. Gherbazi, Toary LLP

Minimizing Green Construction Risk
Brendan D. Bowles, Glaholt LLP

Managing Risk in the Bidding and Tendering Process
Glenn W. Akerley, WeirFoulds LLP

The New Rules of Procedure in Ontario
David J. 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

Capital for Construction
Ehud Estreich, WildWood Capital Inc.

Problems with Standard Contract Clauses
Donald E. Short, Davis LLP

Construction Arbitration: Avoiding Potential Problems with Standard Contract Clauses
Donald E. Short, Fasken Martineau DuMoulin LLP

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Restructuring and Bankruptcy
John D. Scullion, Axiom Capital Partners

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