

WSBA CONSTRUCTION LAW SECTION COUNCIL MEETING

January 13, 2021 @ 12:00 p.m.

<p>MEETING Virtual Zoom Meeting Only</p> <p>ATTENDEES Brett Hill Jennifer Beyerlein Bart Reed Bryce Sinner Saki Yamada Rick Wetmore Scott Campbell Seth Millstein Todd Henry Colm Nelson Joe Scuderi Eleen Trang Lena Holohan Will Young</p>	<p>CALL IN INFORMATION Phone: +12532158782 Meeting ID: 985 1003 8934</p> <p>Password: 554443</p> <p>URL: https://zoom.us/j/98510038934?pwd=UzNOYmNLbVBVTVo0Tk04RndQbINtUT09</p>
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MEETING MINUTES

1. Approval of December 2020 minutes – Colm Nelson added to attendee list for December 2020 meeting. No other comments, minutes approved.
2. Financial Report – Seth reported expenses went up by approximately \$300. Membership has not increased. The net effect on the budget was approximately (\$275). Otherwise, no changes to report. The section still has approximately \$27,000 in the bank. Discussion was had on the possibility of increasing the scholarship amount for the writing competition or reducing the tuition amount for the next CLE to utilize some of the available money.
3. Mid-Year CLE – (Bankruptcy/Receivership) – Bart and Jennifer gave update. The section approved the title “Navigating a Financially Troubled Project During Uncertain Times.” Date: June 11, 2021. Decision on whether the meeting will be all virtual or will have any in-person component was tabled until the next council meeting. The syllabus was discussed and is expected to include:

8:30-9:30 am

9:30-10:45 am

Ethics presentation by Chris Soelling. 1 hr for ethics credit.
Bankruptcy and Receivership. 1 hr total for bankruptcy, receivership, and panel Q&A; discussion; Nate R. bankruptcy; Stewart Heath for receivership; will be discussing in the context of construction projects, incl. lien resolution in the context of bankruptcy/receivership; 30 min bankruptcy; 30 min receivership; 10-15 min Q&A.

10:45-11:00 am	Break
11:00 am-12:00 pm	Legislative update
12:00-1:30 pm	Judges' panel at lunch. Fifteen minutes getting lunch, 12:15 – 1:30 panel session. The judicial panel is expected to feature Judges Rogers, Shaffer, and Andrus.
1:30-2:00	Liens: Paige and Seth
2:00-2:30	<i>Conway</i> case presentation; potential speaker R. Dumm w/ Schwabe; Supreme Court hearing <i>Conway</i> in a week or two. Discussion on potentially adding another recent case and splitting a full hour between two presenters, but settled on 20 or 30 min of <i>Conway</i> only.
2:30-3:30	COVID claims on projects – delay and inefficiency. The section agreed that presentation should be informational only. Possible related topics could include interplay with force majeure and insurance perspectives. COVID panel – 15 min. from insurance perspective by a carrier lawyer. 15-20 min on COVID impacts and report on what we're seeing from industry groups about how claims have been handled. The author(s) of a recently published MCA, NECA, and SMACNA white paper could be potential speakers. For panel discussion, possibility of having a plaintiff perspective and coverage perspective was discussed, possibly with moderators to guide the Q&A session. Jennifer, Seth, and Lena to reach out to contacts for potential speakers
3:30-4:30	Case law update. Paul Cressman is confirmed
4:30-	Virtual happy hour. Possibility of a "pop quiz" for prizes was discussed. Invitations will not be sent to law students to attend happy hour this year because virtual happy hours are not very effective for networking.

4. Road Trip CLE – Topic: anatomy of a construction project, start to finish. Contracting to performance to dispute. To take place August 2021. No updates, tabled for discussion at next meeting.

5. Writing Competition Planning – Topic: design professional limitations of liability. Will launch February 1. Seth will contact law school writing programs to advertise. Discussion was had on the due date relative to final exam schedules, the May section meeting, and the mid-year CLE. The section agreed the entries will be due at the end of April; a winner voted on and approved at the May section meeting; and the winner will be announced at the mid-year CLE.

6. Updating Form Contracts & Approving Design Build w/ GMP – Colm commented regarding adding "undisputed amounts" before "all Work performed" in § 1.2.3; removing "structural" from "material structural defects" and adding "good and workmanlike manner" language to § 6.1. Brett to compare with other approved form contracts regarding "good and workmanlike manner" language for discussion at next section meeting. Exhibit B-2 to be revised to be unconditional. Discussion was had on potentially raising auto insurance limits to \$500,000 or \$1,000,000. The section agreed E&O insurance will be addressed in the body of the agreement similar to other insurance provisions, with a minimum limit of at least \$500,000, rather than as a separate exhibit. Brett to revise Design

Build agreement and recirculate. Other approved form contracts also need to be reviewed to confirm final lien release is unconditional.

7. Meeting adjourned at approx. 1:15. All other agenda topics that were not discussed were tabled for discussion at the next council meeting.