



Oregon Law Institute  
of Lewis & Clark Law School

# Deconstructing the Construction Litigation Case

**Learn from the best and hone your strategies  
for handling construction claims.**

**C**onstruction litigation requires the advocate to master not only a unique—and changing—body of law but also the reality of how buildings are built and what can go wrong. Successful claim resolution requires a working knowledge of liability and builders' risk insurance, as well as managing many disparate parties from engineers and architects to owners of the building trades. Trials or arbitrations can be long and very complex, requiring the attorney to orchestrate expert testimony, physical evidence, and the disciplines of design and construction in a way that teaches the jury or fact-finder how materials work and are applied, how construction is scheduled and sequenced, and the risks of loss that are ever present on a construction project.

This program brings together the best perspectives from experienced attorneys, judges, and experts to “deconstruct the construction litigation case” and tackle the complexities of construction litigation in Oregon.

**Friday, March 9, 2012**

Oregon Convention Center  
777 NE Martin Luther King Jr. Blvd.  
Portland, Oregon

**6.75 General MCLE Credits**

# SCHEDULE

- 8:00 a.m. LATE REGISTRATION AND DISTRIBUTION OF MATERIALS
- 8:30–9:15 **Contract Is King? Tort Trumps?**  
**Recent Key Decisions**
- The ascendance of tort claims for negligent construction
  - Statutes of limitation
  - The duty created by building codes and industry standards
    - *R. Hunter Bitner, II*
    - *Martha J. Hodgkinson*
- 9:15–10:00 **Payment, Performance, and Delay:**  
**Practical Construction Law**
- Payment: timeliness from the owner; security for payment—stop notices, liens; retention from subcontractors
  - Performance: documentation—emails, letters, notes to the file; job close-out and punch lists; subcontractor claims—passthrough
  - Delay: notices required by the contract; who is responsible—owner, contractor and/or subcontractor?; money *and* time?; difficulties in proof
    - *David T. Douthwaite*
- 10:00–10:15 BREAK
- 10:15–11:45 **Use and Abuse of the Complex Construction Case Program**
- What is the proper role and jurisdiction of the referee? Should the referee mediate?
  - Drafting the case management order to solve, not create, disputes
  - How does the court treat the referee's findings?
  - The program's benefits to prepare a case for mediation and for trial
  - Why the program does not work well at times
  - What is a complex case assignment within the program? Do you get a 24/7 judge?  
Moderator: *D. Gary Christensen*
    - *Hon. Jean Kerr Maurer*
    - *Angela M. Otto*
    - *Peter J. Viteznik*
    - *Hon. Nan G. Waller*
- 11:45–1:00 LUNCH (on your own)
- 1:00–2:00 **Insurance Claims in Construction Cases**
- Buying coverage—how to advise your construction clients
  - Claim coverage and exclusions—what trial attorneys need to know
  - Care and feeding of an opponent's adjuster—what information is needed to settle a claim before or after a lawsuit is filed
  - Insurance on the job: builder's risk claims arising during construction  
Moderator: *Martha J. Hodgkinson*
    - *Gregory L. Baird*
    - *Michael E. Farnell*
    - *James E. Oliver, Jr.*

# SCHEDULE (cont.)

2:00–2:45

## **Teaching the Jury: How Best to Show What the Witness Has to Say**

- Using physical and demonstrative evidence at deposition and trial
- Illustrating expert testimony effectively
- Creating evidence before the jury's eyes  
– *Troy S. Moody*

2:45–3:00

BREAK

3:00–4:30

## **Trying the Construction Case**

- The pretrial conference—what happens?
- Jury selection—practical issues, use of juror questionnaire, special panel summons, excuses for hardship, and number of peremptory challenges for each party
- Trial—dealing with the everyday presentation of evidence, objections and arguments to the court
- Jury instructions during trial and at the close of the evidence
- Verdicts—how simple or complex do they need to be?

Moderator: *Hon. Judith H. Matarazzo*

– *Dean E. Aldrich*

– *Mark A. Jurva*

– *Michael J. Scott*

4:30 p.m.

ADJOURN

# FACULTY

**Dean E. Aldrich**

*Aldrich Eike PC*

**Gregory L. Baird**

*Gordon & Polsker, LLC*

**R. Hunter Bitner, II**

*Hodgkinson Street LLC*

**D. Gary Christensen**

*Program Co-Planner  
Miller Nash LLP*

**David T. Douthwaite**

*Vice President of Administration  
and Assistant General Counsel,  
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**Michael E. Farnell**

*Parsons Farnell & Grein, LLP*

**Martha J. Hodgkinson**

*Hodgkinson Street LLC*

**Mark A. Jurva**

*Jurva Martin PC*

**Hon. Marilyn L. Litzenberger**

*Program Co-Planner  
Multnomah County Circuit Court*

**Hon. Judith H. Matarazzo**

*Program Co-Planner  
Multnomah County Circuit Court*

**Hon. Jean Kerr Maurer**

*Multnomah County Circuit Court*

**Troy S. Moody**

*President, Naegeli  
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**James E. Oliver, Jr.**

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**Hon. Nan G. Waller**

*Multnomah County Circuit Court*

## LIVE PRESENTATION

**Portland – 3/9/12**  
Oregon Convention Center  
777 NE MLK Jr. Blvd.

## VIDEO REPLAYS

Please register at least one week prior to the replay date.

**Bend – 3/23/12**  
**Replay 8:30 a.m.**  
Bryant Lovlien & Jarvis  
591 Mill View Way

**Eugene – 3/16/12**  
**Replay 8:30 a.m.**  
Harrang Long Gary & Rudnick PC  
360 East 10th Avenue, Ste. 300

**Portland – 3/28/12**  
**Replay 9:00 a.m.**  
Oregon Law Institute  
Gus J. Solomon Courthouse  
620 SW Main Street, Ste. 706

## MCLE CREDIT

*Deconstructing the Construction  
Litigation Case* will receive **6.75**  
General MCLE credits.

## PROGRAM PRODUCTS

Even if you cannot attend, you can still get the program on CDs or DVDs. Use the order form in this brochure to order your set today! OLI Annual Passholders may purchase OLI program products at 50% off the full retail price.

## QUESTIONS?

Please call OLI at (503) 768-6580 in Portland or toll-free in Oregon at (800) 222-8213, e-mail us at [oli@lclark.edu](mailto:oli@lclark.edu), or visit our website at <http://go.lclark.edu/oli>.

# Deconstructing the Construction Litigation Case

Friday, March 9, 2012

Name

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Please "✓" appropriate box below:

Live presentation

Video replay. Location: \_\_\_\_\_ Date: \_\_\_\_\_  
Please register at least one week prior to the replay date.

## TUITION

*Prices apply to live and video replays.*

- \$189** Early registration (*received by March 5, 2012*)
- \$149** New attorneys (admitted 2009–2011) and legal staff (*received by March 5, 2012*)
- \$95** Legal aid attorneys (*received by March 5, 2012*)
- \$15** OLI Passholder (OLI Pass No. \_\_\_\_\_) and Oregon judges and their lawyer staff (*received by March 5, 2012*)
- \$20** *Add to above tuition if registration received after March 5, 2012*

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*I am unable to attend. Please send me:*

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or e-mail us at [oli@lclark.edu](mailto:oli@lclark.edu).**

**CONFIRMATION:** Confirmation will be sent via e-mail.

**CANCELLATION POLICY:** Tuition minus a \$20 handling charge will be refunded if the cancellation request is *written and received* by Monday, March 5, 2012.

**NEED ASSISTANCE:** If you are a person with a disability, please let OLI know in time to make any necessary accommodations for you.

**TUITION ASSISTANCE:** A limited number of scholarships are available based on financial need. Contact OLI.