



## **News & Notes**

**Collegiality Newsletter of the  
American College of  
Construction Lawyers**

**Issue 40, October 16, 2017**

### **PRESIDENT'S UPDATE**

Your board of governors met in Maine in August to consider nominations of new fellows. Nine excellent candidates were approved and elected provisionally. By the time you read this note, we should have confirmation of the approval of these new fellows, so it is appropriate that I begin with a welcome to them and their spouses. We will look forward to inducting Charles Asmar, Frank Baltz, John Cook, Bill Franczek, Richard Greenleaf, Harper Heckman, Stephen Jackson, Joel Lewin, and Richard Pearse into the College at our February meeting in California.

On a personal note, I had the pleasure of spending sixteen days in Peru in September. We enjoyed the mystical majesty of Machu Picchu and the

Sacred Inca Valley, and the exotic sights of the Amazon River. It was during that trip I learned the tragic news about our collective loss of our esteemed fellow, Holt Gwyn. This loss is still painful to all of us, and we are planning a suitable memorial for the meeting in February. Two of our fellows, Buck Hinkle and John Hinchey, presented remarks in memory of Holt at the recent Forum meeting in Boston.

I know we all have had Holt and Beth in our thoughts. I thought everyone would want to hear about the simply lovely party that Beth hosted to celebrate Holt's life. Holt was a truly multi-dimensional person and that was commemorated by fabulous poster sized photos of him in happy times and enjoying his pastimes, including playing the guitar, sailing, socializing and

enjoying life with his friends. A slide show also captured some of his happy moments, including travels with his dear ACCL besties and some scenes from our meetings. What struck me most vividly was that these were not photos that looked like Holt from 20 or 30 years ago, but vibrant, fresh-faced smiling photos of Holt as he was the last time many of us saw him in Maine at the ACCL board meeting.

As you can imagine, Holt and Beth's home was absolutely beautiful, elegant and comfortable, with lots of light and interesting art and curios. Beth was a gorgeous and composed hostess notwithstanding the stress and loss, and had of course thought of every detail. Tables with fabulous flowers that Holt loved, a sumptuous spread of food and passed hors d'oeuvres, a band that played the music Holt would have played - every detail was perfect. Mother Nature smiled down on Holt with an absolutely flawless and beautiful "almost Fall in North Carolina" day.

The ACCL was well-represented; we had numerous fellows who gathered among a huge crowd of Holt's and Beth's friends and loved ones from

North Carolina. Although the reason for being together was heartbreaking for all, it was an occasion that Holt would have loved. He was in his element in spirit.

As mentioned, we will have a memorial at the February meeting that all of you can participate in. The Board will also be considering different ways in which the College, so important to Holt, can commemorate our memory of this incredible and talented person. Please pass on any ideas you have to me so that they can be raised at the November board meeting.

In conclusion, you've heard from Bill Seward that the board will meet in Washington DC on November 11, with a cocktail party and dinner on November 10. Anyone who will be in the vicinity is welcome to join the board for this event. See you all soon.

Warm regards,

*- Jenny Fletcher, President*

## **REMEMBERING HOLT**

**Buck Hinkle** - The number of colleagues and friends who knew Holt defies calculation. Many have shared their thoughts and memories about Holt.

With apologies for unbridled length, here are mine.

We met for the first time, briefly, at a mid-90's Forum meeting. Newly selected as Chair of Division 10's steering committee, Holt was scouting for new Division members. His invitation to join Division 10 followed soon after our introduction, along with the prediction that the Division would have "the best meetings." I was impressed by this confident and welcoming North Carolinian, but had to decline because of a prior commitment to Division 2. Luckily, I became Division 2's chair and began spending time with Holt at Forum leadership retreats. Thus began – "to be sure" as Holt would say" – a friendship I will treasure the rest of my days.

The Forum has a knack for fostering life time friendships. Beginning in 2003 Holt & Beth, Debbie & David Ballati, Allen & Wendy Gibson and Anne & I bonded into a vacation group of sorts. We traveled abroad to England, France and Scotland, but more often to California wine country, Kentucky horse country or the Carolinas. Befitting Holt, our routine allowed plenty of time for golf, good wine, music (courtesy of Holt and his guitar) and wide ranging, often funny, conversations.

Friendship with Holt revealed a complex personality – "complex" in the good sense because of his many interests and talents. His legal expertise was easily apparent through conversation, lectures and articles. But his interests extended well beyond law and he excelled in these also. For he was a world-wide sojourner, sailor, golfer and runner; a student of art, literature and journalism; and a wine connoisseur. A modern-day Renaissance man.

Holt's modesty balanced his abilities and accomplishments. The breadth of his modesty becomes more evident as tributes pour in from construction lawyers throughout the U.S. They describe disputes that Holt skillfully tried, arbitrated or mediated, but never mentioned in our conversations. Add articles and chapters he wrote or edited to the list of unmentioned accomplishments. This was a man comfortable in his own skin.

No recollection of Holt's life would be complete without focusing on his passion for music. When thinking about Holt's attachment to music, the lyric from Harry Chapin's "Mr. Tanner" resonates: "music . . . made him feel so happy and it made him feel so good." So it was with Holt. His musical tastes were eclectic: classical, blues, country, folk and rock. Evenings during our trips

and visits were graced by Holt expertly picking his guitar and singing in mellow “Going to Carolina” tones. Sometimes he just practiced, occasionally sipping a glass of wine, while the rest of us talked. He took requests (except John Denver songs, which he adamantly labeled as “cheesy”) and many an evening closed with a chorus of “American Pie.” He made us happy and that made him happy.

Whatever Holt did, he did with forethought and determination. Intellectually and organizationally, he had a vision and a plan. When Chair of the Forum Governing Committee, he steered a financially stressed organization into profitable book publication. He saw the need for the American College of Construction Lawyers Journal and edited the first editions.

Holt’s dedication to ACCL merits elaboration because he loved the College and the College benefitted from his “give back,” a quality Holt prized in others and demanded of himself. The definition of “give back” may vary from one person to the next. For some it is lecturing at seminars and writing articles; for others, service to bar and professional organizations. For Holt give back meant more. It was sweating the details large and small, setting high standards for quality,

making the right choices, picking the right people and overseeing execution of the project. More still, it was fostering inclusion, showing respect and extending hospitality to new and veteran Fellows alike.

Why was Holt so committed to give back to the College? I suspect the answer lies in the traits recently cited by professional golfer Stewart Cink when receiving the Payne Stewart Award given to the player who best exemplifies the values of character, charity and sportsmanship. (Holt’s love of the game beckons this analogy. I hope he would approve.) There are three influences for give back according to Cink: natural empathy for others, life experience and recognition of need. These three combined with initiative bring results for the good of many and happiness for the initiator. As proof, we need only recall to the successful 2017 ACCL annual meeting Holt planned with Beth’s help. Excited, beaming and joyful, those are the images of Holt fixed in my memory. One more chorus, Harry: “It made him feel so happy and made him feel so good.”

Our last trip together was in August, starting with a “guys” golf outing with Dave Ballati and others in Wisconsin. Holt was grappling with hip pain and a hip replacement was scheduled three



months ahead. Discomfort, however, was no match for his customary good play and determination to play 72 holes in 3 days. As usual, he won all the money. I'll always remember his wry grin when the rest of us ponied up the stakes.

Holt, Dave and I then joined our wives and the Gibsons in Maine for the summer ACCL Board meeting. Holt had worked in the area two summers during his UNC years (yes, he was an unredeemable Tar Heel). The four couples spent a sunny Friday afternoon on the porch of the old hotel where he worked. No one knew how nostalgic that afternoon would become. Thank goodness for the photographs.

He attended the ACCL Board meeting the next day. By this time he was experiencing stomach pain, but you wouldn't have guessed. Instead, he was in his give back mode: cheerful, fully engaged, cheerful and providing wise counsel.

He felt worse by Sunday's departure, his face splotchy and his gait slow. He needlessly apologized for his appearance, so characteristic of his mannerly way. We parted with plans to celebrate Beth's birthday the week before hip replacement.

Emergency surgery three days later revealed a perforated ulcer. Post-op

complications extended hospitalization until the tragic end so unimaginable that perfect afternoon in Maine. We last spoke on September 15, his voice weakened but his spirit resolute.

Anne and I loved Holt Gwyn. He was our prince – the charming, cultured, dapper and gifted southern gentleman who gave his heart and soul for the benefit of many.

Good night, sweet prince, and flocks of angels sing thee to thy rest.





## **FUTURE MEETINGS OF INTEREST**

**HOLD THESE DATES** for future ACCL Meetings:

February 22 – 25, 2018  
29<sup>th</sup> Annual Meeting  
Monarch Beach Resort  
Dana Point, California

## **THIS ARTICLE'S FEATURE**

Following a detailed investigation by our Membership Committee and detailed review and discussion by the Board of Governors, the Board voted to elect the following to Fellowship in the College (in alphabetical order):



1. Charles M. Asmar  
Asmar, Schor & McKenna PLLC  
Washington, DC
2. Frank J. Baltz  
Clark Construction Group, LLC  
Bethesda, MD
3. John M. Cook  
Smith Pachter McWhorter PLC  
Tysons Corner, VA
4. William E. Franczek  
Vandeventer Black LLP  
Norfolk, VA
5. Richard F. Greenleaf  
Berg Hill Greenleaf &  
Ruscitti LLP  
Boulder, CO



6. R. Harper Heckman  
Nexsen Pruet PLLC  
Greensboro, NC
7. Stephen E. Jackson  
Warner Angle Hallam Jackson  
& Formanek PLC  
Phoenix, AZ
8. Joel Lewin  
Hinckley Allen  
Boston, MA
9. Richard W. Pearse  
Vedder Price PC  
Chicago, IL

The ACCL would like to extend a heartfelt congratulations to the New Fellows and we look forward to learning more about them in our upcoming January issue of News & Notes.

### **COLLEGIALITY CORNER**

**Stan Sklar** - I received the 2018 Chicago Arbitration Lawyer of the Year in the 24<sup>th</sup> Edition of Best Lawyers in America.

Also, I was on the Panel for the 21<sup>st</sup> Annual Meeting of the Dispute Review Board Foundation presenting an academic perspective of what works in Dispute Boards.

Additionally, I was on the Panel for the 19<sup>th</sup> Annual Commercial Real Estate Institute presenting Ethical Facing Real Estate Attorneys.

**Allen Gibson** - Our biggest, and best, news is that Thomas Allen Gibson was born on September 15, 2017! He clocked in at 7 lbs. 5 oz. and 20.5 inches. Mother, Father, Thomas and his proud grandparents are all doing well! He is our third grandchild, all of whom live in Charlotte, NC which is only 3 hours from Charleston.



**Joseph McManus** - The Honorable Justice of the Supreme Court for the Commonwealth of the Bahamas recently issued a brilliant 3 line decision as follows:

(I) That Joseph A. McManus, Jr. be and is hereby appointed the Sole Arbitrator to preside over the



arbitration of the dispute between the parties;

(II) That the proceeding herein are deemed stayed.

(III) That the Court makes no order as to costs.

**Carl Ingwalson** - On October 9<sup>th</sup> in Elkader, Iowa, I presented a program on "Northeast Iowa in the Civil War." The program was for the Clayton County Genealogical Society with 60 members and guests attending.

**Josh Leavitt** - I am serving as National Co-Chair of PLI's 19<sup>th</sup> annual Commercial Real Estate Institute and as a part of those duties, I am moderating the Chicago program on October 25<sup>th</sup> - 26<sup>th</sup> and heading the Panel on Construction Law.

**Luis Prats** - I will be inducted into the Stetson University College of Law Hall of Fame later this month.

**Wendy Venoit** - We just finished up the Forum's Fall Meeting (AIA Contract Documents) in Boston on Oct. 4-6, 2017. Several of our Fellows were speakers or in attendance. It was the most well-attended Forum meeting of all time (at 700+ attendees). Special thanks to Buck Hinkle and John Hinchey for presenting a heartwarming tribute to Holt Gwyn. I look forward to seeing

everyone at the Midwinter Meeting at the Marriott Sanibel Harbour Resort in Fort Myers, FL on January 17-19, 2018.

**William Allensworth** - On January 1, 2017 I retired from the practice of law, albeit retaining "of counsel" status at my firm. That status entitles me to a modest office overlooking the negative edge swimming pool on the roof of the apartment building next door, and [so far] unlimited opportunities to pontificate about "olden times" when associates uncomplainingly worked nights and Saturdays, writing briefs addressed to scholarly and impartial jurists. My former partners and my associates will tire of these discussions before I do, but in the meantime it's fun to be around a couple of dozen young people whose careers are on the make, especially since I'm not doing any work.

Kay and I have moved to a small condo in a downtown high rise in Austin, but spend our summers in Powell River, about 80 miles north of Vancouver on the mainland coast. Son Will and our daughter in law Anne have produced our first grandchild, a lovely girl named Catherine. We'll have details and dozens of baby pictures with which to bore you in California next Spring. (If your interest appears to be lagging, I can always discuss medical



conditions, which I've found to be hugely interesting at this stage in life).

**Kenneth Kupchak** - We took the long way from Hawaii to the Forum fall meeting in Boston - by way of Falling Water to the 5,250 foot summit of Mount Lafayette, along the Franconia Ridge and down Old Bridle Path, in New Hampshire.

At the Fall meeting, Buck Hinkle and John Hinchey celebrated Holt Gwyn before a record crowd of over 680. Not a dry eye in the place, speakers included.



**Buck Hinkle** - Anne Gorham and I were admitted to the AAA Construction and Commercial arbitration panels in June. We were also speakers at the Forum fall meeting in Boston.

**Shelly Ewald** - I attended the ICC Commission meeting in Sydney, Australia on October 6, 2017 as part of the Working Group on the Construction Arbitration Report.

I also attended the International Bar Association Meeting, where I presented on the International Construction Projects Committee Panel, "Projects Under Pressure: Common Law Approaches to Suspension and Termination."

**Steven Lesser** - I have been appointed as Chair of the 2018 ABA Annual Meeting Program Committee. The Committee consists of 15 lawyers throughout the country that selects, promotes and produces the CLE Showcase Programs presented during the ABA Annual Meeting in Chicago in August, 2018.

**Jim Groton** - I, at age 90, continue to write, speak and advocate on the subject of preventing and de-escalating disputes. I delivered an educational program "Stopping Construction Disputes Before They Happen: Jobsite Relationships that Prevent and De-escalate Disputes" at the Atlanta Build Expo held at Atlanta's World Congress Center on July 12. If any Fellow would like to use my PowerPoints for their own educational program (they're not copyrighted), please

contact me at [jimgroton@eversheds-sutherland.com](mailto:jimgroton@eversheds-sutherland.com). I have also prepared a set of PowerPoints on "The Construction Industry's Unique Contributions to Dispute Resolution: Pre-dispute and Pre-escalation Processes to Prevent Disputes. I make the same offer with respect to these PowerPoints.

**Paul Lurie** - Over the past 15 years, I have been a serious photographer again picking up my work for our high school newspaper and yearbook.

My Farmscapes are on my website [www.luriephoto.com](http://www.luriephoto.com).

I do most of my work in Door County Wisconsin which is 1.5 hours north of Greenbay on Lake Michigan. We have had a vacation house there in Baileys Harbor, Wisconsin for 30 years.

My work is in the Ridges Sanctuary museum which is the largest non-governmental nature center in the U.S.

My work has also been particularly attractive to medical facilities and is hanging in the Eisenhower Hospital in Palm Springs, California, Rush Medical in Chicago, and the Family Institute at Northwestern University in Chicago. Some are in nature museums in a backlit form.

All my images are printed large, for example, 4 feet by 2 feet and larger.

I have also had work on the cover of the Chicago Bar Record and my work in the permanent art collection of Schiff Hardin.

I fly with a friend in a Cessna 150.  
I use a Fujifilm X-Pro 1 digital camera.

The picture below is looking South on Lake Michigan. It shows the ridges formed from the rising and falling lake over thousands of years. It is a recent image that I am still working on.

Not a bad way to use my 50 year interest in "real estate."



**Alec Moseley** - Sue and I were awakened in the wee hours of July 24 by the sound of lightning striking our house, leading shortly to a fire and the total destruction of the home and all its contents. Thanks to wonderful

support and care from neighbors, friends, and colleagues, we are doing well, hoping to begin the rebuilding process shortly, and anticipating a truly simplified lifestyle.

**Joe Pierce** - We moved to Santa Rosa, California late last year, the city that you may have seen a bit in the news lately. I learned of the so-called "Tubbs" firestorm when I went to the gym at the club next to my house early Monday morning. The news line on the TV screen on my exercise bike told me that here was in fact a big fire in Santa Rosa and that the mandatory evacuation line was about two miles away from my house. No flames visible, although the air was a bit smoky. This all happened so quickly that those in the way of the fire hardly had time to get out. Two good sized neighborhoods were pretty much wiped out.

As luck would have it, we are in the western edge of the city and slightly south. The destroyed areas on the news are in north Santa Rosa. We haven't lost power or water. There is another big fire on the eastern edge of the city that has done damage and has the potential to do more, but that doesn't appear to be a threat to us. So I think we will be fine. A lot of folks aren't so fortunate.

## **EDITOR'S NOTE**

This certainly has been a few months with many sad events from the disastrous hurricanes and forest fires to the loss of our own beloved Holt Gwyn. On the other hand, it is always exciting and refreshing to see all of the interesting activities of our fellows. As usual, I continue to be impressed by the wide variety of skills and experience demonstrated by the Fellows. Finally, this is our annual issue where we introduce the newly elected Fellows to the College. I know that you will join me in welcoming each and every one of them to our organization.

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