



ACCoLades

*Collegiality Newsletter of the
American College of Construction
Lawyers*

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PRESIDENT'S UPDATE

As I type this, having been sheltering at home for six weeks, the fun and camaraderie of Tucson have become wonderful, but distant memories. The fact that I stood close to, and even hugged many of you, seems like a decadent pleasure now. And, what a pleasure the meeting was, thanks to our incredible "hosts," Dave and Mary Beth Lane and Kathy and Lionel Barnes. Although the weather didn't completely cooperate on Saturday, everyone enjoyed playing cowpoke at the Friday night barbeque (particularly at the Western-themed photo booth), and Tucson was the perfect setting for welcoming our nine newest Fellows into the fold. And, of course, Kathy's program was fantastic, particularly David

Ratterman's lecture - the finest Currie lecture in many years (and the first instance I can recall of a standing ovation). Thanks to Donna, Bill, and all who contributed to this hugely successful meeting.

But, back to the present. On Friday, April 17, your Board held its first ever fully virtual meeting via Zoom - the entire Board was "in attendance," and the meeting went off with nary a hitch. Though being in the same room is obviously preferable, and I missed the conversations over drinks and meals, the efficiency of meeting from the comfort of our home offices was certainly a plus.

For starters, we welcomed our newest Board member, Paul Bruno, who will finish out the term of the

Honorable Rick Lowe. Rick, having become an Honorary Fellow, is unable to continue to serve on the Board. We will miss Rick's humor and thoughtful advice, and thank him for his service.

Although the main focus of the meeting was planning for next year's annual meeting (more about that below), Charles Sink reported that the Summer issue of the Journal is at the printer, and, having decided to step down this Fall after five years of tremendous service as Journal Editor, asked the Board to approve John Ralls as his successor. While the Board is sorry to lose the wit and humor of Charles's Journal leadership and recognizes that we owe him dearly, we are equally confident that John will be up to the challenges of the post, and approved the transition without reservation. Charles, thank you so much for your relentless efforts in locating authors and working with them to produce consistently excellent, thought-provoking articles.

Dean Thomson also updated the Board on the efforts of the ADR Committee's Barry Grove Dispute Resolution Project, aka the Guided Choice Task Force, which is moving forward with a survey in which Fellows who have used Guided

Choice principals will be queried about the efficacy of the approach, as measured by several different metrics. Stay tuned for more news on this front.

Having taken the sense of the College at the annual meeting on the subject of an ACCL Endowment, the Board has tasked Buck Hinkle and the Endowment Task Force with putting pen to paper in order to provide the Board with a recommended governing structure and documents pursuant to which an Endowment would be constituted.

Due to the uncertainty surrounding when travel will return to normal, and our inability to negotiate an acceptable force majeure clause with hotels in resort settings, we have scrapped our plans to hold our August Board meeting in Sun Valley, choosing instead to plan on meeting in a major transit hub where Board members can book rooms individually, thus ensuring that plans to meet in person can be scrapped on short notice. While we would prefer to hold the August meeting in person, since that is when the Board considers the nominations of new Fellows, we will hold the August meeting by video-conference if necessary.

As noted above, the bulk of the Board meeting was focused on the planning of the 2021 Annual Meeting, when we will hopefully gather at the Belmond at Charleston Place. The Belmond is an exceptional property, and Charleston is a charming and exciting host city. Program planning is well underway, and we have secured the grounds of the Governor Thomas Bennett House for our Friday night festivities. As for the program itself, I could not have chosen better when I asked Jim Schenck to serve as Program Chair. Having nearly completed his program outline weeks ago, featuring several sessions looking at an array of issues arising from modular construction, Jim is now creating a second, alternative program focusing on lessons learned from the COVID-19 experiences, with sessions discussing the negotiation of force majeure clauses, insurance coverage issues, emergency project delivery methods, and design/building standards for emergency construction — all informed by lessons learned in the wake of this pandemic. There is some concern that some of this will be “old news” in ten months, so we will continue to consider topics from both outlines going forward.

If you have thoughts about the program, Jim welcomes your input. And, of course, I should say that Donna and I will continue to monitor the pandemic and its likely impact on gatherings like ours, and our discussions with the Belmond will only increase as our future becomes clearer. While we hope and pray that life will have returned to normal by next March, we are taking nothing for granted in our planning.

Finally, please remember that this is the season for nominating new Fellows—Nominating Packets are due on May 15, and the forms can be found on our website under the “References and Links” tab, then under “Resource Library.” Anne Gorham’s Membership Committee (Albee Bates, Helmut Johannsen, Steve Lesser, and Allison Snyder) is gearing up and will be reaching out to many of you as they vet our nominees after May 15. Please do your best to make yourselves available for their calls, as the selection of future Fellows is perhaps our most important exercise.

Please be careful, stay safe and healthy, and, if possible, stay sane!

- *John Heisse, President*

FUTURE MEETINGS OF INTEREST

HOLD THESE DATES for future ACCL Meetings:

32nd Annual Meeting

March 18-21, 2021

Belmond Charleston Place
Charleston, South Carolina

COMMITTEE REPORTS

Document Committee -

The Document Committee devoted most of its energy this past year to putting together its Panel for the Annual Meeting. The Committee was lucky to have the support of Brad Gordon, Robert Brown, and Christine McAnney for a lively discussion on how In-house counsel keep all the balls in the air when dealing with the numerous and varied documents they see in their businesses. We thank them for their willingness to participate.

In addition, the Committee, with the guidance of Co-chair George Meyer, assembled a Committee list serve to facilitate internal Committee communications.

The Committee is currently considering doing a survey of the members asking them to submit preferred Force Majeure provisions

for owner, contractor and/or designer agreements, in light of the COVID 19 pandemic and, making the responses part of the Committees presentation at next year's Annual Meeting.

Finally, as George Meyer rotates off as Committee chair, we thank him for his time and energies. Joel Heusinger steps in to join Christine McAnney as co-chairs.

ADR Committee -

The ADR Committee, in combination with the International Committee, presented a program at the last meeting on New Developments in International ADR including the New Canadian Adjudication Procedures presented by new Fellow Sharon Vogel, the Queen Mary Arbitration Study presented by Albee Bates, and the Singapore Convention on Mediation presented by Tom Stipanowich. The Committee is supporting Dean Thomson, Paul Lurie, and the Guided Choice Task Force in the preparation of a study on the qualitative benefits to clients of the early retention of a mediator based on answers to a questionnaire from many Fellows. The Committee will also investigate the experience members of the College had with online mediation and arbitration

during the COVID 19 shutdown including proposed best practices and the implications for the future.

In-House Counsel Committee -

The College's In-House Counsel Committee met at the annual meeting in Tucson and again by videoconference on April 27. During the Tucson meeting, pre-COVID-19, the committee's agenda was relatively conventional. Among other things, the committee discussed trends in contractual risk allocation by owners and between design-builders and the design professionals on their teams. The committee also discussed legal department software products for matter management, electronic billing by outside counsel and contract workflows. In the post-COVID-19 video call, the committee members shared their experiences regarding how their companies are handling the current crisis. In particular, the committee members exchanged views on force majeure, changes of law, suspension of work and other contract provisions that they have invoked with their clients and the potential outcomes. The group also discussed productivity impacts from social-distancing and other work requirements, potential insurance claims and expected financial impacts to clients and

subcontractors. The committee will reconvene for a follow-up videoconference over the summer.

COLLEGIALITY CORNER

Below are some of the photos taken during the Saturday evening dinner festivities.

The full 2020 photo gallery is accessible on the ACCL website under the SOCIAL menu tab by selecting the sub-menu item 'Photo Gallery'.

You must be logged in as a Fellow to access the galleries on the ACCL website at:

<https://www.accl.org/gallery/>





Barbara Werther –

Call for Diverse Candidates

All: We hope you are all sheltering in place, being safe, and making the best of a bad, and extremely unusual, situation.

Ann Gorham's email was timely, as she reminded us that nominations

are due for new Fellows in less than a month's time.

Should you have any recommendations for diverse candidates, would you please be so kind as to identify them either to Robbie MacPherson, rMacPherson@Gibbonslaw.com, or Barbara Werther, barbara@samek-law.com. If you could provide the potential candidates CV, that would be most appreciated.

We would also like to hear your suggestions for potential candidates in the future.

Be safe! Robbie and Barbara



Ken Kupchak – Immune System building outings in Nature are

de rigor in Hawaii- while zooming, facebooking or webexing mediations and settlement conferences, including with the Court.

I settled a 9 participant webex mediation on Monday, including Allen Gibson's firm. Settled, with Court's assistance, another on Tuesday by conference phone, and today planned a Zoom mediation for later this month involving participants from Maine, Boston and points West.

While social distancing did not adversely impact these cases, I suspect that settlements will occur more frequently- there will be no trials during the crisis and live witnesses in any proceeding may soon be ancient memory.

Gordon Jaynes – I thought that some of the Fellows might enjoy reading a presentation by Chris Seppala, of White & Case and of FIDIC, called "The Past and Future of Construction Arbitration" published in Global Arbitration Review in 2018.

It is too long to include in ACCoLades, but any interested Fellow can [click here](#) for a copy.

Chris tips his hat of memory to two ACCL Honorary Fellows, H.H. Humphrey Lloyd QC and me, in the course of his engrossing story of how he came to be a foreign lawyer in Paris, became involved in the boom of arbitration of disputes under international engineering and construction contracts following the 1973 Oil Price Revolution. He also offers his "crystal ball" musings about what lies ahead.



Roberto Hernández – Celebrating COMAD’S 55th Anniversary. A cocktail party? A new brochure? A new website? How to celebrate almost 6 decades of existence, who we are and what do we believe in?

We have been blessed, and our clients and friends have been too. So, anything flashy would not make a real difference. However, there are people that really need support in a world full of differences that affect

and hurt the hearts and souls of humanity. So, we decided to make something that leaves a print: The Sacred Heart School in Mexico City has a project called “Viviendas con Corazón” ("Homes with a heart") supporting the “Construyendo” Association.



Every year, at least 5 houses are constructed from zero for a family in extreme poverty by young students from different places in Mexico. COMAD decided to donate a house to one of the families in commemoration of our 55th Anniversary, giving a little bit back to the people in extreme need, what we have received from God, life, our good clients, and our decent work. In a moment of economic slowdown, this donation was not easy. So, we hope you join us to celebrate this 55th Anniversary

wishing to the owners of the new house, that God Bless them and enjoy it for many years.



P.S. This year, thanks to the efforts of many Good souls, 7 houses could be constructed so there are still people that want to make a difference in a complicated world.



Bill Franczek – Kaitlyn and I had a wonderful trip in January to the Galapagos Islands and Machu Picchu. Here are a couple pictures from that trip.





Shelly Ewald – On January 27, 2020, I was sworn in to the bar of the United States Supreme Court with other George Washington Law School alumni as well as 168 JAG officers from all branches of the US military. My son, Conrad Stapleton, joined me and managed to take a photo of the GW group with US Supreme Court Justice Ruth Bader Ginsburg. It was inspiring for both me and Conrad.



On February, 8-9, 2020, I also spoke on Force Majeure at the ICC-FIDIC conference in São Paulo, Brazil. Aisha Nadar (FIDIC Board Member, Member of the ICSID Panel of Conciliators and Dispute Resolution Consultant at Advokatfirman Runeland in Stockholm Sweden) chaired the panel and is also pictured below. Fun small world fact: although Aisha and I attended and graduated from the University of Nebraska together, we did not meet until October 2013.



Charles Sink - I confine my bicycling to a (now well worn) Peloton, although the roads in the Bay Area were never safer, at least as to cars. To my dismay, if not my surprise, the spouse of a College member (known as by her Peloton handle as “YesrYes”) regularly leaves me in the proverbial dust.

EDITOR'S NOTE

I hope that this issue of ACCoLades finds you and your families all safe and well.

I certainly have learned, and enjoyed, a lot from the recent very robust communications on our e-mail list serve. It is one of the best parts about the College!

My big news, perhaps not big enough to support an article in our newsletter, is that my wife and I have been blessed with our first grandchild. Here is a picture of her.



Her name is Quinn Dickson and she was born on March 2, 2020 in New York City (just one day after Mike Zetlin's brand new grandson).

My very best wishes to all of you to remain happy and healthy.

My best personal regards.

John H. "Buzz" Tarlow

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