



AMERICAN COLLEGE
of CONSTRUCTION LAWYERS

33rd Annual Meeting



February 24-27, 2022
The Montage Laguna Beach
Laguna Beach, California

THURSDAY, FEBRUARY 24, 2022

- 9:00 a.m. Golf Tournament** (*Consecutive Tee Times*)
The golf tournament will be held at the Monarch Beach Golf Links with consecutive tee times beginning at 9:00 a.m. The fee is \$250 per golfer and includes green fees, cart, balls and prizes. Transportation is on your own. The ACCL golf committee will assign players to foursomes and communicate the pairings prior to the event. Fellows, spouses and guests are welcome to play in this golf tournament. *Advance registration is required on the registration form.*
Golf Chair: Jotham D. Pierce, Jr., Petaluma, CA
- 2:00 – 6:00 p.m. Registration Desk Open**
- 3:30 – 4:00 p.m. ACCL Executive Committee Meeting**
- 4:00 – 5:00 p.m. ACCL Board of Governors Meeting**
- 4:00 – 5:00 p.m. Special Committee Meetings:**
ACCL Journal Committee Professors Committee
- 5:00 – 7:00 p.m. Welcome Reception: Wine & Cheese** (Casual Dress)
- 7:00 p.m. Dinner Mixer**
Fellows and guests are invited to form your own dinner parties with a restaurant list to be provided in advance. Transportation is on your own. (The 2021 & 2022 Classes of New Fellows have an arranged dinner with the Executive Committee.)

FRIDAY, FEBRUARY 25, 2022

- 7:30 – 5:00 p.m. Registration Desk Open**
- 7:30 – 8:30 a.m. Fellows Breakfast**
- 7:30 – 8:30 a.m. New Fellows Orientation Breakfast** (for 2021 & 2022 New Fellows)
- 7:30 – 8:30 a.m. Past Presidents Breakfast**
- 7:30 – 8:30 a.m. Diversity Committee Breakfast**
- 7:30 – 3:00 p.m. Spouse/Guest Hospitality Suite Open**
The Hospitality Suite will remain open until 3:00 p.m. each day for relaxing and catching up with friends. Breakfast will be served at 8:00 a.m. Introduction of New Fellow Spouses will take place at 8:30 a.m. *See Spouse/Guest Program for details and optional events.*
- 8:45 – 9:00 a.m. Introductory Remarks and Welcome**
Opening remarks, including introduction of new 2021 & 2022 Fellows and safety/Covid protocols.
Anne E. Gorham, ACCL President
Eileen M. Diepenbrock, Program Chair
- 9:00 – 10:00 a.m. PLENARY ONE – Construction Mega-Projects: How They Succeed and Why They Fail**
We all appreciate that mega-projects are more challenging to manage and inherently more complex than lesser construction projects, and because of the larger capital investment involved, the cost of failure is considerably greater. What comes as surprising news to most is that over 50% of mega-projects fail on one or more of the three basic criteria for a successful project – completion somewhere near the authorized budget, completion somewhere close to the expected project duration, and operability within at least shouting distance of what was planned. This is just the starting point of Edward Merrow's

research on mega-projects. Relying on the extensive database compiled by Independent Project Analysis (the consulting firm Mr. Merrow founded), based on working with owners and contractors on hundreds of mega-projects around the world, Mr. Merrow has many insights into the reasons for this abysmal failure rate. Among them, mega-projects are much more fragile in their ability to absorb major changes in scope and schedule, and much more sensitive to shortcomings in the early design and planning stages. Moreover, once they get off track, recovery is essentially impossible, and acceleration efforts just burn money to little or no effect. He also will talk about his findings on the role of contracts and risk-shifting provisions in the mega-project context, and his observations as to how construction lawyers can best contribute to mega-project success.

His book, *"Industrial Megaprojects, Concepts, Strategies and Practices for Success"* is available on Amazon.

Presenter: Edward W. Merrow, President, Independent Project Analysis (IPA), Ashburn, VA

10:00 – 10:15 a.m. Refreshment Break

10:15 – 11:30 a.m. PLENARY TWO – Government Construction Mega-Projects: What Could Possibly Go Wrong? (Public Contracts Committee)

To follow up on Ed Merrow's presentation, the Public Contracts Committee will have an interactive panel briefly present two case studies involving our Fellows: (1) Jim Nagle spent 10 years litigating the Idaho National Laboratory Pit 9 Project. After terminating the contractor, the Government spent \$560 million to re-procure and the contractor claimed \$50 million in damages. The problems stemmed from using a fixed price contract to procure untried new technology which, of course, failed to work; and (2) Mike Branca was project counsel to the contractor from the contract award to the end of litigation on a VA hospital construction in Colorado. The contractor walked away from the \$600 million project after claiming the Government materially breached the contract by issuing too many and too substantial changes in the work. Ed Merrow will add his take, especially from the owner's viewpoint. The panel will use the case studies to point out key lessons learned.

*Presenters: Michael A. Branca, Washington, DC
Edward W. Merrow, President, Independent Project Analysis (IPA), Ashburn, VA
James F. Nagle, Seattle, WA*

11:30 – 12:30 p.m. PLENARY THREE – The Impending Insurance Crisis Associated with Mega-Projects (In-House and Insurance Committees)

The impending insurance crisis associated with mega-projects is most significantly seen in the project specific insurance market including professional liability and other liability insurance and potentially builders risk with the increasing impacts of climate change. The issues on mega-projects are also impacting the professional liability market overall given the significant losses experienced by carriers. For practice policies, it has resulted in 25% premium increases during the most recent renewals and increased SIRs and deductibles. For the project specific professional liability insurance market, the situation is even more dire. Carriers like Lexington/AIG have currently withdrawn from the market (not sure if this is permanent), policies are increasingly difficult to place with huge premium increases, lower limits available, higher deductibles and some carriers refusing to write in certain markets or for certain contractors. The other outcome that is being seen is that carriers are insisting that each claim issue should carry its own deductible and this is on massive projects which means potentially no or minimal insurance.

The risk profile on these projects certainly has played a significant part in this as well as the low bidder win environments that drive aggressive bidding and unrealistically low contingencies and profit levels. The other driver is that some design builders are perceived as viewing these policies as another pocket to access to cover project losses on and bidding issues. The last driver is the issue of the appropriate standard of care during the bidding phase.

*Presenters: Jayne A. Czik, Bohemia, NY
W. Stephen Dale, New York, NY
Jody K. Debs, Denver, CO*

FRIDAY, FEBRUARY 25, 2022 (Continued...)

12:30 – 1:30 p.m. Fellows' Collegial Luncheon

1:30 – 2:30 p.m. PLENARY FOUR – Innovative International ADR Approaches on Mega-Projects

(International and ADR Committees)

ADR is a frequently used tool to resolve disputes on international mega-projects, including new approaches such as Med-Arb and internationally-oriented approaches, such as early interim binding dispute resolution, which prevent a project from being gridlocked or shut down, including adjudication. (Early interim binding dispute resolution has been in place in the UK for over two decades and has spread to other jurisdictions including Australia and Canada.)

*Presenters: Paul A. Bruno, Stateline, NV
Deborah B. Mastin, Miami, FL
R. Bruce Reynolds, Toronto, ON, Canada*

2:30 – 2:45 p.m. Refreshment Break

2:45 – 4:15 p.m. PLENARY FIVE – Advanced Ethical Considerations in Construction ADR

(Diversity and ADR Committees)

This panel discussion will identify some of the many ways in which we all, as advocates, clients, and neutrals, encounter implicit bias – in ourselves and others – in the process of construction dispute arbitration and mediation. Then we will discuss – in a constructive, nonthreatening way – some of the ethical ramifications of such thinking and perceptions and how we can improve our effectiveness when acting as advocates, clients, and neutrals, by learning to identify and address the influence of implicit bias.

This presentation will encourage audience participation through real-time polling and possible round-table discussions on scenarios guided by an expert in implicit bias training.

*Presenters: Kathleen B. Nalty, JD, Kathleen Nalty Consulting, LLC, Denver, CO
Kathleen A. Olden Barnes, McLean, VA
Nicholas K. Holmes, Manchester, NH
Patricia H. Thompson, Miami, FL*

4:15 – 5:15 p.m. In Memoriam: Tribute

Fellows, spouses and guests are invited to celebrate the lives of our departed Fellows and their contributions to the profession, the industry and to the College.

6:00 – 10:00 p.m. Cocktails, Dinner & Dancing (Casual Dress)

SATURDAY, FEBRUARY 26, 2022

7:00 – 12:30 p.m. Registration Desk Open

7:00 – 8:30 a.m. Fellows Breakfast

7:00 – 8:00 a.m. 2023 Annual Meeting – Planning Committee Meeting

7:30 – 3:00 p.m. Spouse/Guest Hospitality Suite Open

Breakfast served at 8:00 a.m. The hospitality suite will remain open until 3:00 p.m. See *Spouse/Guest Program* for details and optional events.

8:30 – 9:30 a.m.**OVERTON CURRIE LECTURE – The California Water Project**

“Life as we know it in California would not exist without the massive and intricate web of local, state and federal water projects that allow 25 million people to live where there is only enough water for 2 million. Whether half full or half empty, some of the water in a glass travelled a mile, some 600 miles, and some even 1,400 miles. All of that water moves because of California’s water transportation ‘mega-project.’” Through this program we will learn about one of the greatest mega-projects, certainly in California history, starting with the basic water imbalance in California (North/South, snow/rain, surface and underground water) and the efforts to bring water to the high population centers. This includes the Colorado River aqueduct (history and creation/vitality for SoCal) and the State Water Project and the (brief) history of 5 other water systems. We will learn about the civil engineering required, the politics and alteration of land necessary to re-route water into “virtual watersheds”, and what the future looks like with desalinization and other projects.

Presenter: Charles M. Sink, Oakland, CA

9:30 – 9:45 a.m.**Refreshment Break****9:45 – 11:15 a.m.****PLENARY SIX – Robot Dogs, Drones, Wearables & Collaborating in the Cloud: Legal Issues & Construction Technology**

Technology innovations are rapidly reshaping design and construction. New technologies are continuously being rolled out that allow designers and contractors to work collaboratively and provide detailed information in real time, whether generated by drones, robots or wearable technology devices. Peer to peer communication platforms such as Slack and What’s App supplement and are starting to replace emails and texts. Huge volumes of data are being created, but how can construction lawyers efficiently use this information to assist clients in resolving disputes? These issues will be explored through the use of three vignettes that discuss: (1) new design and construction technologies and how they are used on a hypothetical mega-project, (2) requesting such data in discovery or resisting its production (e.g. smart phones, drone data, peer to peer communication, social media) and how to summarize and use it in evidence; and (3) the legal issues regarding using such data as evidence or in demonstrative exhibits. The program will include audience participation.

*Video Presenters: Russ Gibbs, Vice President, Director of Virtual Design & Construction, Innovation and Operational Technology, Brasfield & Gorrie, L.L.C., Birmingham, AL
Brett Lamb, CEO, Construction Discovery Experts, Dallas, TX
Elisabeth Malsch, Ph.D, P.E., Senior Principal, Thornton Tomasetti, New York, NY*

*Live Presenters: Hon. Ralph Artigliere (Ret.), Clemson, SC (Via Zoom)
Deborah S. Ballati, San Francisco, CA
Andrew D. Ness, Washington, DC*

11:15 – 12:15 p.m. HOT TIPS/HOT TOPICS

Chairs: R. Harper Heckman, Greensboro, NC & Anthony L. Meagher, Baltimore, MD

Join us for another entertaining and interactive discussion of hot topics and trends in the construction industry. This year, our 2021 class of new Fellows will select and present the hot topics. The discussion will be moderated by the Committee Chairs. As always, we will save time to discuss any additional tips or topics provided by the Fellows.

12:15 p.m.**Adjourn Saturday Sessions**

SATURDAY, FEBRUARY 26, 2022 (Continued...)

12:30 p.m. AFTERNOON ACTIVITIES BEGIN

12:45 p.m. Walking Tour of Laguna Beach

Stroll the streets of Laguna Beach and pick your spot for a relaxing lunch. Laguna Beach has many shops and art galleries to explore. A walking map will be provided with information for a self-guided walking tour. The bus will depart promptly at 12:45 p.m. and loop from The Montage to Laguna Beach throughout the afternoon. Cost is \$15 per person. *Advance registration is required on the registration form.*



1:30 – 4:30 p.m. Whale Watching Cruise on “Dana Pride”

The bus will depart the Montage at 1:30 p.m. for a 7-minute drive to Dana Point. The boat will depart promptly at 2:00 pm. There will be no refunds for ticketholders missing the departure. The cost of the tour is \$65 per person and includes a 2-hour fully-narrated whale watching tour (cash bar available on board). Bring your sunglasses, hats, jackets and sunblock, and don't you dare forget your cameras and binoculars! This is a unique opportunity to see one of the greatest creatures of the sea, provided that you can look away from the amazing views of the California coastline long enough. *Advance registration is required on the registration form.*



7:00 – 8:00 p.m. FELLOWS AND GUESTS RECEPTION (Black Tie Attire)

8:00 – 10:30 p.m. FORMAL DINNER

- **Recognitions and Awards**
Anne E. Gorham, ACCL President
- **Formal Introduction of New Fellows**
John E. Bulman, ACCL President-Elect

SUNDAY, FEBRUARY 27, 2022

7:00 – 11:00 a.m. Registration Desk Open

7:15 – 9:00 a.m. Fellows and Spouse/Guest Continental Breakfast

8:00 – 9:00 a.m. PRACTICE TRANSITION

One size does not fit all. The path from a high-pressure, high-profile construction law practice to a world of leisure time, open calendars, quiet phones, and static computer screens is relatively foreign to all of us, frightening to many of us, and mystifying to others of us. Can we really practice at our optimum level of performance forever? What are we going to do about our ego? Do we have the temperament, time, and interest to be an effective neutral? Is that the natural or only path available to us? How long do our younger partners or our mega-law firms really want us around? Are we adding value? Is there another path? Is there a writer, or an actor, or an artist, or a counselor, or a teacher, or a historian, or a social activist hidden inside somewhere waiting for an opportunity to escape and spread her or his wings? How can that hidden person spread his or her wings and still maintain meaningful contact with the profession and industry to which we have devoted our lives?

Prior to the Annual Meeting, the Practice Transition Committee will pose the foregoing questions to senior College Fellows by listserve and perhaps individual contact. They also will be asked to contribute stories, thoughts and experiences, which will be developed into a *Practice Transition Hot Tips program* – a bookend, to the new Fellow Hot Tips program. A limited number of selected, senior Fellows in the audience will be called upon to briefly relay their experiences/observations, and audience interaction will be encouraged.

*Presenters: Andrew D. Ness, Washington, DC
David B. Ratterman, Louisville, KY*

9:00 – 9:15 a.m. Refreshment Break

9:15 – 10:30 a.m. ACCL BUSINESS MEETING

- Election of New Board Members and Officers
- Committee and Task Force Reports
- Remarks by President Bulman
- Adjourn 33rd Annual Meeting

10:45 – 12:15 p.m. Board of Governors Meeting

HOTEL INFORMATION

For the convenience of conference registrants, a block of rooms has been reserved at The Montage Laguna Beach, 30801 S. Coast Hwy, Laguna Beach, CA 92651. Please reserve your room by calling The Montage Laguna Beach at 1-(888)-715-6700 and asking for the *American College of Construction Lawyers (ACCL)* group rate or visit <https://book.passkey.com/go/ACCL3322> to book your reservation online. **To ensure availability please make your reservation as soon as possible. The reservation deadline is January 21, 2022.** After that date, or when the room block is exhausted, the hotel will assign rooms on a space and rate available basis only. The conference rates are \$398.00 plus tax for a standard single/double. The \$50/night resort fee is discounted to \$20/night for attendees booking in the ACCL room block. A one-night deposit is required at the time of reservation. Please note in the event of room cancellation, the deposit is refundable if notice is received by the hotel at least 7 days prior to arrival. Cancellations within 7 days of arrival will incur a cancellation fee of one night's room and tax.

SPOUSE/GUEST PROGRAM & OPTIONAL EVENTS

FRIDAY, FEBRUARY 25, 2022

- 7:30 – 3:00 p.m. Spouse/Guest Hospitality Suite Open**
The Hospitality Suite will remain open until 3:00 p.m. each day for refreshments, relaxing and catching up with friends.
- 8:00 a.m. Breakfast**
- 8:30 – 10:00 a.m. Introduction of New Fellow Spouses**
- 10:15 a.m. Book Club (“Hieroglyphics” by Jill McCorkle) (Optional Ticketed Event)**
Start reading the book now so you can discuss it with your friends. *No cost to attend but advance RSVP is required.*
- 2:00 – 3:15 p.m. Thalassic Beach Walk (Optional Ticketed Event)**
Join us for a Thalassic Beach Walk and discover why scientists have hailed seawater as the “soup of life.” Guests will arrive at the Spa front desk at 2:00 p.m. to grab spa sunscreen and water (all provided), and then be guided on a path down to the beach to walk barefoot in the ocean and sand at a brisk pace, meditate by the ocean’s edge and learn the benefits of the sea. Cost is \$20 per person. *Advance registration is required.*
- 2:30 – 3:45 p.m. Bourbon: An American Spirit (Optional Ticketed Event)**
Kentucky Bourbon is a uniquely American whisky now more popular than ever the world over. We’ll discuss its origins, its ingredients and explain its differences from other spirits. Then we’ll sip a few leading brands straight up followed by a sampling of well-known Bourbon cocktails. Responsibly, of course. Bring your taste buds. Cost is \$25 per person. *Advance registration is required.*

SATURDAY, FEBRUARY 26, 2022

- 7:30 – 3:00 p.m. Spouse/Guest Hospitality Suite Open**
- 8:00 a.m. Breakfast**
- 9:00 – 11:30 a.m. Guided Hike of Dana Point Headlands Loop (Optional Ticketed Event)**
The bus will depart promptly at 9:00 a.m. We begin this easy hike by walking down to the Salt Creek Beach and heading south to follow the Strands Revetment Trail (cement beach path) past stunning beach front luxury homes and adjacent surfers. Then we’ll enter the protected marine nature preserve of the Dana Point Headlands Conservation Area featuring sweeping ocean views among native sage scrub. This one-mile trail is home to two federally endangered species (Coastal California gnatcatcher and the Pacific pocket mouse), and is a Environmentally Sensitive Habitat Area for native rare plants. If we’re lucky we’ll see Grey Whales as they migrate near shore between Mexico and Russia. At the end of this trail we enjoy a massive view of the Dana Point Harbor built in the 1960’s, now home to a 1770 replica of a privateer schooner used during the American Revolution. On a clear day we’ll also see the entire coastline south to San Diego. Cost is \$115 per person. *Advance registration is required.*
- 10:00 a.m. You’re At The Post! (Optional Ticketed Event)**
The Thoroughbred, the elegant breed at the center of “the sport of kings” and the Kentucky Derby, “the greatest two minutes in sports.” We’ll begin with a brief review of equine evolution and the Thoroughbred’s origins. Then fast forward to modern day breeding and racing from the firsthand perspective of special guest Billy Koch, whose Red Feather Stables has enjoyed repeated success on the track. We’ll conclude with Billy and Dave Ballati offering tips for picking winners and take your questions. *No cost to attend but advance RSVP is required.*
- 12:00 p.m. Adjourn to Saturday Afternoon Activities (See program schedule for details.)**

REGISTRATION FORM: ACCL 33RD ANNUAL MEETING

February 24-27, 2022 | The Montage Laguna Beach | Lagune Beach, California

REGISTRANT INFORMATION

Name: _____

Company/Firm: _____

Address: _____ City: _____

State/Province: _____ Zip/Postal Code: _____ Country: _____

Phone: _____ Fax: _____ Email: _____

Special Dietary Restrictions: _____

CONFERENCE REGISTRATION & OPTIONAL EVENT SELECTIONS

Fellows Conference Fee: \$975 \$ _____
(Does not include accommodations or incidentals. Registrants should pay the hotel directly for these expenses.)

Printed Conference Materials: Conference materials on USB are *included* with your conference registration. Some sessions may have hard-copy handouts onsite. The binder of conference materials is also available for purchase for an additional \$50. \$ _____

Spouse/Guest Fee: \$495 *Name of Spouse/Guest:* _____ \$ _____
(Includes food & beverage for hospitality suite, Friday/Saturday/Sunday breakfasts, Thursday reception and reception/dinner on Friday/Saturday nights.)

Thursday Activity:

Golf Tournament: \$250/person \$ _____

Friday Spouse Activities: (Check event times to ensure you don't double book!)

Book Club: Free (RSVP Required)

Thalassic Beach Walk: \$20/person \$ _____

Bourbon: An American Spirit: \$25/person \$ _____

Saturday Spouse Activities: (Check event times to ensure you don't double book!)

Guided Hike of Dana Point Headlands Loop: \$115/person \$ _____

You're At The Post!: Free (RSVP Required)

Saturday Group Activities: (Please list names below if selecting separate events.)

Walking Tour of Laguna Beach: \$15/person \$ _____

Whale Watching Cruise on "Dana Pride": \$65/person \$ _____

TOTAL DUE \$ _____

Advance registration is required for all events. Payment is due with your registration fee.

PAYMENT INFORMATION

TOTAL DUE (from front) \$ _____

Make check payable in U.S. Dollars to "American College of Construction Lawyers"

Please charge my: American Express MasterCard Visa

Credit Card #: _____ Exp. Date: _____ Sec. Code: _____

Name on Card (Please Print): _____

Billing Address (include zip code): _____

Authorized Signature: _____

CANCELLATION/REFUND POLICY

Refunds less a \$50 processing fee will be granted to registrants who cancel on or before 30 days prior to the first day of the meeting. If notice is received after 30 days and before 7 days prior to the first day of the meeting, refunds will be granted less a \$150 processing fee. *No refunds will be granted thereafter.* In some cases optional event tickets must be pre-purchased or guaranteed by the College on a specific date. Such tickets will not be eligible for refund after that date regardless of when the cancellation notice is received.

To register by mail send the completed registration form & payment to:

ACCL 33rd Annual Meeting
PO Box 4646
Austin, TX 78765

Fax to: (512) 451-2911

Register Online at: www.accl.org



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