



AMERICAN COLLEGE
of CONSTRUCTION LAWYERS

35th Annual Meeting



February 22-25, 2024

**Park Hyatt Aviara Resort, Golf Club & Spa
Carlsbad, California**

THURSDAY, FEBRUARY 22, 2024

- 1:00 – 6:00 p.m. Registration Desk Open**
- 2:15 – 3:00 p.m. ACCL Executive Committee Meeting**
- 3:00 – 4:00 p.m. ACCL Board of Governors Meeting**
- 4:00 – 5:00 p.m. Special Committee Meetings:**
ADR Committee
Government Contracts 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 (or dinners organized by class/year of induction) with a restaurant list to be provided in advance. Transportation and dinner costs are on your own. (The 2024 Class of New Fellows and their spouse/guest have an arranged dinner with the Executive Committee.)

FRIDAY, FEBRUARY 23, 2024

- 6:30 – 5:00 p.m. Registration Desk Open**
- 7:00 – 8:00 a.m. Fellows Breakfast *(All Welcome)* & Group Breakfasts**
- New Fellows Orientation Breakfast (for 2024 New Fellows)
 - Past Presidents Breakfast
 - Diversity Equity Inclusion (DEI) Committee Breakfast
 - International Committee Breakfast
- 7:00 – 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 7:00 a.m. Introduction of New Fellow Spouses will take place at 8:00 a.m. *See Spouse/Guest Program for details and optional events.*
- 8:00 – 8:15 a.m. Introductory Remarks and Welcome**
 Opening remarks, safety moment, introduction of new 2024 Fellows and recognition of Founding Fellows.
Shelly L. Ewald, ACCL President
Joseph C. Kovars, Program Chair
- 8:15 – 9:30 a.m. PLENARY ONE – Vogtle Nuclear Units 3 & 4 – The Good, the Bad & the Ugly of the “Nuclear Renaissance”**
 In 2008, EPC contracts were signed for new “3rd Generation” nuclear power plants for delivery in the mid-2010s, heralding a Nuclear Renaissance after 30 years without a new start nuclear project in the U.S. Leading the way were Georgia Power and the Westinghouse/Shaw JV, which contracted for two units of Westinghouse’s new AP1000 design at Plant Vogtle, and two others in South Carolina. Then reality hit, and the projects hit one major design, construction and regulatory obstacle after another, leading to lawsuits, a trail of bankruptcies, ruined companies and reputations – in addition to a 300% cost overrun and 7+ years of completion delays and, in South Carolina, guilty pleas and prison sentences. Hear the fascinating tale of how things went so wrong, and what lessons can be learned, from Fellows who were at the center of the maelstrom.
- Presenters: Michael A. Branca, Washington, DC*
Robert Preston Brown, Atlanta, GA
Brian G. Corgan, Atlanta, GA
Andrew D. Ness, Washington, DC

9:30 – 9:45 a.m. Refreshment Break

9:45 – 11:00 a.m. PLENARY TWO – How Do Project Delivery Methods Align With Project Outcomes? A Reality Check

There are many strongly held opinions about the value of various approaches to contracting for projects. Some favor lump-sum Design-Build. Some argue that Integrated Project Delivery provides superior value for owners. And still others support Progressive Design-Build or Progressive Design-Build/Convert to Fixed Price, and so forth and so on. But which contracting strategies actually perform better, when better is measured by cost and schedule competitiveness, predictability, and fitness-for-purpose? Ed Merrow returns to the College to address that question with data from over 1100 projects. You may be surprised to hear his conclusions. Time will be allowed for Q&A for Fellows to share their questions, experiences, and thoughts.

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

11:00 – 12:00 p.m. PLENARY THREE – The Art of and the Need for Mentoring

Mentoring is critical to the development and advancement of all young construction attorneys. Diverse attorneys benefit as much or more from good mentoring. The panel will provide best practices for successful mentoring. How do young attorneys get first chair experience? Who pays for the mentoring?

*Presenters: Nicholas K. Holmes, Concord, NH (Moderator)
Jayne A. Czik, Bohemia, NY
Allen W. Estes III, Seattle, WA
Brad A. Gordon, Providence, RI
Barbara G. Werther, Rockville, MD*

12:00 – 1:30 p.m. Fellows' Collegial Luncheon

Featuring 35th Anniversary remembrances from founders and past leaders of the College.

1:30 – 2:45 p.m. PLENARY FOUR – Construction Insolvencies in the International Context

In recent years, there have been a number of high profile of insolvencies of global players in the construction industry. This session will examine the lessons learned from those experiences and will consider recent trends in relation to insolvency, the effect on those in the construction chain, negotiating contractual mechanisms to address insolvency risk including performance security and project bank accounts, legislative mechanisms, policy initiatives from various jurisdictions, and recent cases of interest.

*Presenters: Jennifer L. Kneeland, Senior Partner, Watt, Tieder, Hoffar & Fitzgerald, L.L.P., McLean, VA
Anthony L. Meagher, Baltimore, MD
Sharon Vogel, Toronto, ON, Canada*

2:45 – 3:00 p.m. Refreshment Break

3:00 – 4:00 p.m. PLENARY FIVE – Recent Developments in Attorney-Client Privilege, Especially Involving In-House Counsel (1.0 Ethics Credit)

Hear about how the attorney-client privilege presents special concerns for in-house counsel, whose communications frequently include a mix of business and legal advice. The U.S. Supreme Court briefly considered these issues in 2023 after briefing and oral argument in *In re Grand Jury (9th Cir. 2022)* (appeal dismissed as cert. was "improvidently granted"). Also, the panel will discuss *FTC v. Amazon*, in which the FTC alleges that a defendant's "actual knowledge" of wrongful conduct is established by its "routinely confer[ing]... with in-house counsel" on the statutes at issue.

*Presenters: Jeffrey R. Cruz, New York, NY (Moderator)
Arjun Agarwal, Singapore
Lisa S. Mingoia, Atlanta, GA
Cassidy R. Rosenthal, Lexington, KY*

FRIDAY, FEBRUARY 23, 2024 (Continued...)

- 4:00 – 5:00 p.m. In Memoriam: Tribute to Fellows who Passed in 2023**
Fellows, spouses and guests are invited to celebrate the lives of our departed Fellows and their contributions to the profession, the industry and the College.
Organized by: John P. Ahlers and Terrence L. Brookie
- 6:30 – 9:30 p.m. Cocktails, Informal Dinner & Social Event**
Join us on the Park Lawn for a casual-dress reception, and in the Grand Ballroom for the buffet dinner and dancing with live band “The Mighty Untouchables.”

SATURDAY, FEBRUARY 24, 2024

- 7:00 – 12:30 p.m. Registration Desk Open**
- 7:30 – 8:30 a.m. Fellows Breakfast (All Welcome) & Group Breakfasts**
- 2025 Annual Meeting – Planning Committee Meeting
 - Professors Committee Meeting
 - ACCL Foundation Board Breakfast
- 7:30 – 3:00 p.m. Spouse/Guest Hospitality Suite Open**
Breakfast served at 7:30 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. PLENARY SIX – Shocking Facts About Our Power Grid System: What Construction Lawyers Need to Know**
How does the Grid work? How vulnerable is it? How do alternative energy sources work with the Grid? How do transmission projects get permitted, built, and connected to the Grid? Are we ready for EVs, charging stations, data centers, forest fires, hurricanes, block chain mining, climate change, etc.? California has set a goal of having 90% renewable energy by 2035. How the heck will LA do that? And what’s up with the Texas Grid?
- Presenters: Valerie L. Green, Partner, Day Pitney LLP, Washington, DC
Denis Obiang, Power Engineer Manager of Transmission Planning, L.A. Dept. of Water and Power, Los Angeles, CA*
- 9:30 – 9:45 a.m. Refreshment Break**
- 9:45 – 10:45 a.m. BREAKOUT SESSIONS I & II**

Breakout I:

Mock Arbitration

We have a long history of using mock juries for civil trials. How about using a neutral evaluator or panel for a mock presentation in advance of an arbitration? Lessons learned from those who have experience with these situations. Questions we will address include:

- What is the main purpose of the mock arbitration?
- How will the client react to the trial lawyer’s suggestion?
- What are the best practices?
- What are the problems and pitfalls?
- How do you select your mock arbitrator(s)?
- Is there a way to do it cheaply for a smaller case?

Presenters:

*Robert J. MacPherson, Manasquan, NJ (Moderator)
Adrian L. Bastianelli, III, Washington, DC
Robert Preston Brown, Atlanta, GA
Richard P. Flake, Houston, TX
Herbert H. (Hal) Gray III, Atlanta, GA*

Breakout II: It's All About the Money: Proposed Best Practices to Presentation and Consideration of Quantum Issues in Arbitration

An in-depth look at presenting and evaluating damages claim in arbitration, including:

- Practice tips on how to prevent surprises during the hearing about the amount of damages sought
- Protocols for arbitrator or neutrals to secure more specific and articulated damages claims in demands and counter-demands
- Emphasis on early development of damage models and presentation
- Discussions of the importance of damage presentations in arbitration
- Methods to encourage responses and counter-responses to address damages (and not just entitlement)
- Strategies in presenting damages
 - Amount of request- are extreme calculations or claims productive?
 - Is there value in alternative calculations?
 - What is the role of consultants?
 - Who decides what information is reviewed or presented to the consultants?
 - How can you control consultant costs when presenting or responding to damage and quantum issues?
- Methods to get arbitrators or advocates to focus on the damage issues to be decided
- Suggestions of arbitration best practices or techniques to allow the arbitrators to arrive at evidence-based decisions on the amount of damages for each component of the claim/counterclaim
- Presentation and assessment of attorneys' fees as an element of damages

*Moderators: Mark J. Heley, Minneapolis, MN
Judith B. Ittig, Washington, DC*

*Presenters: Albert Bates, Jr., Pittsburgh, PA (ADR Neutral's Perspective)
Deborah B. Mastin, Aventura, FL (ADR Neutral's Perspective)
John W. Ralls, San Mateo, CA (Advocate's Perspective)*

10:45 – 11:00 a.m. Refreshment Break

11:00 – 12:00 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 2023-inducted 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.

12:00 p.m. Adjourn Saturday Sessions



***MCLE Credit:** This program has been approved for 8.75 hours of MCLE credit (1.0 hours ethics) in the State of Texas. Applications have been filed and are pending in other states. Approved credit hours may vary by state. Full MCLE information will be available at registration.

SATURDAY, FEBRUARY 24, 2024 (Continued...)

12:30 p.m.

AFTERNOON ACTIVITIES BEGIN

(Optional)

Pre-Purchase a Box Lunch To-Go

In a hurry? Grab a quick bite before your afternoon event begins. Cost is \$35 per person. Available for pickup beginning at 12:00 p.m. Please pre-purchase your box lunch on the registration form as they will not be available for purchase onsite.

12:30 – 5:30 p.m. Golf Tournament *(Shotgun Start)*

The golf tournament will be held at the Aviara Golf Club (7447 Batiquitos Dr., Carlsbad, CA 92011; (760) 603-6900 - a 15-minute walk / 5-minute drive from hotel) with a shotgun start at 12:30 p.m. The fee is \$295 per golfer and includes green fees, cart, balls and prizes. Transportation will be provided by hotel shuttle. 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.*

**1:00 – 5:00 p.m.****Whale Watching Cruise on “Dana Pride”**

The bus will depart Park Hyatt Aviara at 1:00 p.m. for the 40-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 \$80 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.*

**1:30 – 3:30 p.m.****Pickleball Tournament**

The tournament will be held at the Aviara Tennis Club (7210 Blue Heron Pl, Carlsbad, CA 92011 - a .4 mile/7-minute walk from hotel.) Cost is \$20 per person. *Advance registration is required on the registration form.*

6:15 p.m.**BOARD, OFFICER AND PAST PRESIDENT GROUP PHOTOS****6:30 – 7:30 p.m.****FELLOWS AND GUESTS RECEPTION** *(Black Tie Attire)***7:30 – 9:30 p.m.****FORMAL DINNER**

- **Recognitions and Awards**

Shelly L. Ewald, ACCL President

- **Formal Introduction of New Fellows**

Dean B. Thomson, ACCL President-Elect

9:30 – 10:30 p.m.**35TH ANNIVERSARY CELEBRATION & SOCIAL HOUR**

SUNDAY, FEBRUARY 25, 2024

6:45 – 11:00 a.m. Registration Desk Open

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

9:00 – 10:15 a.m. PLENARY SEVEN – Give Back Stories and Opportunities

Speakers will discuss their experiences with giving back to the construction industry and the construction bar. What opportunities are available in 2024 for Fellows to give back to the industry or our profession?

Presenters: Teaching: Steven M. Siegfried (Construction Law for law, architecture, and engineering students); Pro Bono: William M. Hill (Building for Good); Community Redevelopment in NC: James S. Schenck, IV (The Construction Professionals Network Institute); ACCL Foundation: Buckner Hinkle, Jr.; Writing: Patrick J. O'Connor, Jr. (On Construction Treatise) and David B. Ratterman; Shelly L. Ewald (give back opportunities in ACCL); Robert J. MacPherson (AGC Ace Mentoring)

10:15 – 10:30 a.m. Refreshment Break

10:30 – 11:00 a.m. ACCL BUSINESS MEETING

- Election of New Board Members and Officers
- Remarks by President
- Committee and Task Force Reports
- Adjourn 35th Annual Meeting

11:00 – 12:00 p.m. Board of Governors Meeting

HOTEL & TRAVEL INFORMATION



HOTEL: For the convenience of conference registrants, a block of rooms has been reserved at The Park Hyatt Aviara Resort & Spa, 7100 Aviara Resort Drive, Carlsbad, CA 92011. Please reserve your room by calling The Park Hyatt Aviara at +1 (760) 448-1234 and asking for the American College of Construction Lawyers *group code G-ACCL* or visit <https://tinyurl.com/ACCL24Hotel> to book your reservation online. **To ensure availability please make your reservation as soon as possible. The reservation deadline is**

January 30, 2024. 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 \$380.00 plus tax for a standard single/double. The \$45/night resort fee is discounted to \$10/night for attendees booking in the ACCL room block and covers internet access in guest rooms, nightly turndown with bottled water, unlimited local telephone calls from your room, 24-hour fitness center and game room/pool/hot tub access, golf bag storage, shuttle service to Carlsbad Premium Outlets and more. 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 72 hours prior to arrival. Cancellations within 72 hours of arrival will incur a cancellation fee of one night's room and tax.* Valet parking at the resort is \$65 per night and \$55 per day.

TRAVEL: The closest airport is the San Diego International Airport (SAN), about 32 miles (45-minute drive) from the Park Hyatt Aviara Resort. Rideshares are estimated at \$60 each way and taxi fare at ~\$100 each way. Shuttle service and rental car services are also available at the airport. The Orange County/John Wayne International Airport (SNA) is the next closest at 60 miles (~70 minutes) away.

SPOUSE/GUEST PROGRAM & OPTIONAL EVENTS

FRIDAY, FEBRUARY 23, 2024

- 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... or challenge them to a game of Mahjong!
- 8:00 a.m. Breakfast**
- 8:30 – 9:45 a.m. Introduction of New Fellow Spouses**
- 10:00 – 3:30 p.m. Trip to Balboa Park or La Jolla, California (Optional Ticketed Event)**
What is the best way to enjoy Southern California?... Well, your way of course! For this excursion you can choose between San Diego's famous Balboa Park, the nation's largest urban cultural park, or the affluent seaside hideaway of La Jolla, CA.
- Balboa Park features 16 major museums to explore. We recommend purchasing the Balboa Park "Limited Pass" onsite (\$56/adult) -- good for admission to any 4 of the participating museums (Zoo admission not included). For more information on Balboa Park, the featured museums and admission options visit <http://www.balboapark.org>.
- If relaxing with friends over lunch, strolling through art galleries, and browsing unique local shopping is more your speed, then you won't want to miss out on the community of La Jolla. The bus will take you to the heart of the La Jolla – Prospect Street – known to locals and visitors alike as the Rodeo Drive of San Diego. For more information on restaurants, shopping, and area attractions please visit <https://lajollabythesea.com/>.
- The bus to both Balboa Park and La Jolla will depart from the Park Hyatt Aviara at 10:00am, dropping the first group off at Balboa Park followed by La Jolla. For the return trip to the Park Hyatt Aviara, Balboa Park registrants should meet the bus prior to 2:30pm for departure. The bus will then pick up the La Jolla registrants at 3:00pm. The bus is estimated to return to the resort at 3:30pm. ***This excursion requires a minimum of 30 registrants. Lunch is not included.** Cost is \$30 per person. *Advance registration required.*
- 11:30 – 4:30 p.m. Socializing & Lounging at The Pool Cabana**
Enjoy the Oceanview Pool Deck Cabana with private shaded area, dedicated chaise lounges, 43" TV with soundbar, overhead fan, personal refrigerator and charging outlets. Food and drinks are on your own. The area is reserved for ACCL and available on a first-come/first-served basis. *Please indicate your RSVP on the registration form.*

SATURDAY, FEBRUARY 24, 2024

- 7:30 – 3:00 p.m. Spouse/Guest Hospitality Suite Open**
- 8:00 a.m. Breakfast**
- 8:00 a.m. Rise & Shine Yoga (Optional Ticketed Event)**
Start your day with an inspiring yoga practice to prepare your body and mind for awareness in all that you do. Cost is \$30 per person. *Advance registration is required.*
- 10:00 a.m. Book Club (Book TBA) (Optional Ticketed Event)**
The book title will be selected and shared with registrants to read in advance for discussion as a group onsite. *No cost to attend but advance RSVP is required.*
- 10:00 a.m. Gratitude Hike at Bataquitos Lagoon (Optional Ticketed Event)**
This guided trail walk around the Lagoon will incorporate intention setting, gratitude, and breathwork. Cost is \$25 per person. *Advance registration is required.*
- 12:00 p.m. Adjourn to Saturday Afternoon Activities (See program schedule for details.)**

REGISTRATION FORM: ACCL 35TH ANNUAL MEETING

February 22-25, 2024 | Park Hyatt Aviara Resort | Carlsbad, 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: \$1,295** \$ _____

(Does not include accommodations or incidentals. Registrants should pay the hotel directly for these expenses.)

☐ **Add Printed Conference Materials:** Conference materials on USB are *included* with your conference registration. You may purchase the printed binder version for an additional \$50. \$ _____

☐ **Spouse/Guest Fee: \$595** *Name of Spouse/Guest:* _____ \$ _____

(Includes food & beverage for hospitality suite, Friday/Saturday/Sunday breakfasts, Thursday reception and reception/dinner on Friday & Saturday nights.)

☐ **Contribution to the Frank Elmore Memorial Fund:** (Increments of \$25 suggested.) \$ _____

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

→ Trip to ☐ **Balboa Park** *or* ☐ **La Jolla, CA:** \$30/person \$ _____

☐ **The Pool Cabana:** Free (RSVP Required)

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

☐ **Rise & Shine Yoga:** \$30/person \$ _____

☐ **Book Club:** Free (RSVP Required)

☐ **Gratitude Hike at Bataquitos Lagoon:** \$25/person \$ _____

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

☐ **Pre-Purchase a Box Lunch To-Go:** \$35/person x _____ = \$ _____

☐ **Golf Tournament:** \$295/person \$ _____

☐ **Whale Watching Cruise on Dana Pride:** \$80/person \$ _____

☐ **Pickleball Tournament:** \$20/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 (Street+C/S/Z): _____

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 notice of cancellation is received.

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

ACCL 35th Annual Meeting
PO Box 4646
Austin, TX 78765

Fax to: (512) 451-2911

Email/Scan to: bills@clesolutions.com

Register Online at: www.accl.org



AMERICAN COLLEGE
of CONSTRUCTION LAWYERS