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# 21ST ANNUAL WEST REGION Construction Litigation & Insurance Coverage Conference - San Diego, CA

SEPT. 16-18, 2015

MANCHESTER GRAND

HYATT SAN DIEGO

SAN DIEGO, CA

# A G E N D A



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# mc conference agenda

WEDNESDAY SEPTEMBER 16 - FRIDAY SEPTEMBER 18, 2015 - MANCHESTER GRAND HYATT SAN DIEGO

## 2015 West Region Conference Advisory Board

### Conference Chair:

J.D. Turner, Esq., Lorber, Greenfield & Polito, LLP

### Co-Chairs:

Keith G. Bremer, Esq., Bremer Whyte Brown & O'Meara LLP  
Trisha J. Davis, Empirical Loss Management LLC  
Kenneth S. Kasdan, Esq., Kasdan LippSmith Weber Turner LLP  
Richard L. Righi, Esq., Righi Fitch Law Group  
John E. Zehnder, Esq., Scheer & Zehnder LLP  
Adrienne E. Nordstrom, Esq., Clapp Moroney Vucinich  
Beeman Scheley

**Wednesday, September 16**

## Registration & Welcome Reception

**Manchester Grand Hyatt San Diego**

**5:30pm - 7:00pm - Coronado Ballroom Foyer & Terrace**

## Welcome Reception

Hosted By:

**Bremer Whyte Brown & O'Meara LLP**

**Centext Legal Services**

**Ericksen Arbuthnot**

**Esquire Deposition Solutions**

**Gartner + Bloom, P.C.**

**Litigation Services**

**Phipps Reporting**

**U.S. Legal Support**

**Wood Smith Henning & Berman LLP**

**Thursday, September 17**

## Registration & Continental Breakfast Plus!

**7:30am - 8:45am - Coronado Ballroom Foyer & Terrace**  
(Sponsored by Grand Sponsors)



## Opening Remarks

**8:45am - 8:50am - Coronado Ballroom**

Dan Ducommun, President and CEO, MC Consultants, Inc.

## Agenda Briefing

**8:50am - 9:00am - Coronado Ballroom**

J.D. Turner, Esq., Lorber, Greenfield & Polito, LLP

**9:00am - 10:30am - Coronado Ballroom**

### GENERAL SESSION #1

### West Region Gavels Speak!

### West Region Judicial Review of Construction Defect Issues and Recent Case Rulings

Panel Moderator:

Irene Yesowitch, Esq., Cozen O'Connor

Panelists:

Hon. Susan H. Johnson, Eighth Judicial District Court, NV  
Hon. John W. Madden, IV, Second Judicial District Court, Denver, CO  
Hon. Judith H. Matarazzo, Multnomah County Circuit Court, OR  
Hon. Jim Rogers, King County Superior Court, Seattle, WA  
Hon. Jeff Shadwick, 55th Civil District Court, Houston, TX  
Hon. Ronald L. Styn, San Diego County Superior Court, CA  
Hon. Christopher T. Whitten, Superior Court of Arizona, Phoenix, AZ

- Judge's Points of Views and Perspectives
- Judges Share Recent Regional CD Case Rulings
  - Arizona Rulings
  - California Rulings
  - Colorado Rulings
  - Nevada Rulings
  - Oregon Rulings
  - Texas Rulings
  - Washington Rulings

## Morning Break

**10:30am - 10:45am - Coronado Ballroom Foyer & Terrace**

**10:45am - 12:00pm - Coronado Ballroom**

### GENERAL SESSION #2

### Strategies for Case Resolution - Pre-Trial

Panel Moderator:

Christian Lucia, Esq., Sellar Hazard & Lucia

Panelists:

David S. Blau, Esq., Blau & Associates, P.C.  
Timothy C. Earl, Esq., Sullivan Hill Lewin Rez & Engel  
Thomas M. Johnson, Esq., Vial Fotheringham LLP  
J. Nathan Owens, Esq., Newmeyer & Dillion LLP  
Jerry R. Satran, Esq., Koeller, Nebeker, Carlson & Haluck, LLP  
John H. Toohey, Esq., Bremer Whyte Brown & O'Meara LLP

- Pre-Trial Strategies From the Developer Point of View
- Pre-Trial Strategies From the Plaintiff Point of View
- Pre-Trial Strategies From the Subcontractor Point of View
- Pre-Trial Strategies From the Coverage Attorney Point of View

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## Express Lunch Break

12:00pm - 12:45pm - Coronado Ballroom Foyer & Terrace  
(Sponsored by Premier Sponsors)

### LUNCH/BREAK

Exhibitor & Food / Beverage Area

Coronado Ballroom Foyer & Terrace

Thursday, September 17<sup>th</sup>

12:00pm - 12:45pm

Sponsored By  
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12:45pm - 2:00pm - Coronado Ballroom

### GENERAL SESSION #3

#### Life After The Judgment - Now What?

Panel Moderator:

Diane O. Palumbo, Esq., Palumbo Bergstrom LLP

Panelists:

Miles C. Holden, Esq., Hanson Bridgett LLP  
Dirk Holt, Esq., Scheer & Zehnder LLP  
Kenneth S. Kasdan, Esq., Kasdan LippSmith Weber Turner LLP  
Natasha A. Landrum, Esq., Lee, Hernandez, Landrum & Garofalo  
Richard L. Righi, Esq., Righi Fitch Law Group  
J.D. Turner, Esq., Lorber, Greenfield & Polito, LLP  
Mark R. VonderHaar, Esq., Haight Brown & Bonesteel LLP

- Bench Trials
- Jury Trials
- Arbitration Award
- Judicial References
- Direct Action

## Afternoon Break

2:00pm - 2:15pm - Coronado Ballroom Foyer & Terrace

2:15pm - 3:30pm - Coronado Ballroom

### GENERAL SESSION #4

#### Insurance Industry's Perspective - From 35,000 Feet

Panel Moderator:

Keith G. Bremer, Esq., Bremer Whyte Brown & O'Meara LLP

Panelists:

Trisha Davis, Empirical Loss Management LLC  
Thomas Gesner, Liberty Mutual Insurance  
Phyllis Modlin, Markel  
Terri Moran, Vela Insurance Services, LLC  
Emma Tortorici, ACE Group  
Mary Ann Vorndran, Navigators Insurance  
Robert Weingarten, Certus Claims Administration  
Eric R. Whiteside, CoverX Specialty Insurance Services

- Claims Handling Pre-litigation
- Changing Trends in Marketplace
- I have Expectations of Counsel and My Adjuster!
- Emerging CD Hot Spots
- Continuing Evolution of Coverage

## Mid-Afternoon Coffee & Cookie Break

3:30pm - 3:45pm - Coronado Ballroom Foyer & Terrace

(Sponsored by Platinum Sponsors)



3:45pm - 5:00pm - Coronado Ballroom

### GENERAL SESSION #5

#### West Region Developer & Builder's Point of View

Panel Moderator:

Stephen J. Henning, Esq., Wood Smith Henning & Berman LLP

Panelists:

John Bowles, Webcor Builders  
Colleen E. Cummings, The Hanover Company  
Richard Daniels, The Ryland Group, Inc.  
William E. Mayer, Esq., D.R. Horton  
Mark Reynolds, Meritage Homes Corporation  
Susan Thorne, Swinerton Incorporated  
Rick Young, Shea Homes

- Why Defect Litigation is on the Decline
- Right to Repair Statutes – Emerging Issues
- Wraps vs. Non Wraps – The Future of Risk Transfer
- Battlegrounds in 2016 and Beyond



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## Conference Networking Party – Caribbean Nights!

6:00pm - 7:30pm - Grand Hyatt 4th Level Pool Deck

### Conference Networking Party

#### Hosted By:

Bremer Whyte Brown & O'Meara LLP  
Centext Legal Services  
Ericksen Arbuthnot  
Esquire Deposition Solutions  
Haight Brown & Bonesteel LLP  
JDi Data Corporation  
Koeller, Nebeker, Carlson & Haluck, LLP  
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Liedle, Lounsbery, Larson & Lidl, LLP  
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Phipps Reporting  
Palumbo Bergstrom LLP  
Resnick & Louis, P.C.  
Righi Fitch Law Group  
U.S. Legal Support  
Vial Fotheringham LLP  
Welsh Law Group, PLC  
Wood Smith Henning & Berman LLP

9:30am - 10:30am - Coronado Ballroom D

#### Concurrent Breakout Session

### 3D, Animation & Other Technologies Used in Trial

Panel Moderator:

Jason C. Gless, Esq., Wood Smith Henning & Berman LLP

Panelists:

Aaron B. Booth, Esq., Law Offices of Aaron B. Booth

Peter Fitzgerald, U.S. Legal Support

David J. Frankenberger, Jr. Esq., Ericksen Arbuthnot

Paul S. Guthorn, Vollmer-Gray Engineering Laboratories

Hon. Rex Heeseman, (Ret.), JAMS

Randolph M. Paul, Esq., Berding Weil LLP

- 3D Demonstration and Discussion
- Animation Demonstrations and Discussion
- Digital Photography Enhancements



9:30am - 10:30am - Coronado Ballrooms A

#### Concurrent Breakout Session

### Summary Judgments & Their Impact Across Multiple West Region States

Panel Moderator:

Betsy A. Gillaspay, Esq., Gillaspay & Rhode PLLC

Panelists:

Jennifer A. Boldi, Esq., Resnick & Louis, P.C.

Stacy L. La Scala, Esq., AMCC

Arthur S. Moreau, III, Esq., Klinedinst PC

James C. Prichard, Esq., Ball Janik LLP

R. Scott Rasmussen, Esq., Hansen Rasmussen, LLC

Luke P. Ryan, Esq., Shinnick & Ryan, LLP

- Statutes of Limitation/Repose
- Declaratory Judgments
- Corporate Dissolution
- AI/Indemnification

### Morning Break

10:30am - 10:45am - Coronado Ballroom Foyer & Patio

Friday, September 18

## Continental Breakfast Plus!

8:00am - 9:30am - Coronado Ballroom Foyer & Terrace

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**10:45am - 12:00pm - Coronado Ballroom B**  
**Concurrent Regional Breakout Session**  
**Arizona Breakout Session 7A**  
**Coverage and Current Trends**

**Panel Moderator:**  
Holly P. Davies, Esq., Lorber, Greenfield & Polito, LLP

**Panelists:**  
Kevin C. Barrett, Esq., Graif Barrett & Matura, P.C.  
Mark A. Holmgren, Esq., Carpenter, Hazlewood, Delgado & Bolen, PLC  
Kyle A. Israel, Esq., Israel & Gerity, PLLC  
Lisa I. Streu, Esq., Welsh Law Group, PLC

- Coverage Update on Insurer's Duty to Defend
- Update on Revisions to the Right to Repair Statute
- Where Does the Negligence Cause of Action Stand in Construction Defect Claims



**10:45am - 12:00pm - Coronado Ballroom D**  
**Concurrent Regional Breakout Session**  
**California Breakout Session 7B**  
**Coverage and Current Trends**

**Panel Moderator:**  
John K. Schlichting, Esq., Sooy & Schlichting, APC

**Panelists:**  
Robert V. Closson, Esq., Hirsch Closson, APLC  
Matthew S. Constantino, Esq., Clapp Moroney Vucinich Beeman Scheley  
Robert M. Freedman, Esq., Tharpe & Howell, LLP  
Tami G. Vail, Esq., Liedle, Lounsbury, Larson & Lidl, LLP  
Brandt L. Wolkin, Esq., Wolkin Curran, LLP

- Insurer's Duty to Defend
- Disputes Between Primary and Excess Insurers
- Loss-of-Use Coverage
- Additional Insureds and SIR Satisfaction
- Notice and Tender, Control of the Defense, and the Duty to Cooperate



**10:45am - 12:00pm - Coronado Ballroom A**  
**Concurrent Regional Breakout Session**  
**Nevada Breakout Session 7C**  
**Coverage and Current Trends**

**Panel Moderator:**  
Shannon G. Splaine, Esq., Lincoln Gustafson & Cercos, LLP

**Panelists:**  
Mark J. Bourassa, Esq., The Bourassa Law Group, LLC  
Jeffrey A. Garofalo, Esq., Lee, Hernandez, Landrum & Garofalo  
Craig A. Marquiz, Esq., Marquiz Law Office PC  
Les W. Robertson, Esq., Robertson & Associates, APC  
Elizabeth A. Skane, Esq., Skane Wilcox LLP

- The Impact of AB 125
- Does Chapter 40 apply to Condos
- Copper Sands Ruling
- Logan v Abe Decision
- Nutton v Sunset Station
- NRS 116
- Coyote Springs Ruling



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**10:45am - 12:00pm - America's Cup Ballroom B**  
**Concurrent Regional Breakout Session**  
**Pacific Northwest Breakout Session 7D**  
**Coverage and Current Trends**

Panel Moderator:

Klarice A. Benn, Esq., Abbott Law Group, P.C.

Panelists:

Kevin A. Eike, Esq., Aldrich Eike, PC

Jim L. Guse, Esq., Barker Martin

Thomas Lether, Esq., Lether & Associates, PLLC

Daniel J. Nichols, Esq., Gordon & Rees LLP

Lindsey M. Sabec, Esq., Chock Barhoum LLP

- Evolving State of SOL and SOR in OR
- Impact of Eclectic Investments Decision on Common Law Indemnity in CD cases
- OR and WA Coverage Law Update Including Meaning of "Collapse" in First Party Property
- Updates on Bad Faith Law in OR and WA



**Conference Adjourned**

12:00pm

See 2016



**10:45am - 12:00pm - Regatta Ballroom B**  
**Concurrent Regional Breakout Session**  
**Rocky Mountain Breakout Session 7E**  
**Coverage and Current Trends**

Panel Moderator:

Patrick J. Casey, Esq., Fox Rothschild LLP

Panelists:

Jeffrey P. Kerrane, Esq., Benson, Kerrane, Storz & Nelson, P.C.

Ted W. McBride, Jr., Esq., Vial Fotheringham LLP

Joe A. Ramirez, Esq., Holland & Hart

Jane E. Young, Esq., McElroy, Deutsch, Mulvany & Carpenter, LLP

- Arbitration v. Jury Trials
- Statute of Repose - Emerging Decisions Post Shaw Construction
- Insurance Coverage Issues for Firewalls and Sprinkler Defects
- The Return of Plan B's
- What is Covered and How CD Claims are Settling Given the Current State of the Law



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