

Schinnerer Provides a Fellowship Opportunity

There is now a new opportunity for students of construction, law or business to increase their knowledge of practice management, professional liability, and public policy issues. In 2008, Schinnerer offers its Milton F. Lunch Research Fellowship, which memorializes the remarkable man who served as the National Society of Professional Engineers' general counsel for 40 years and as a consultant to Schinnerer for another 15.

The fellowship is an intensive eight-week summer program in Schinnerer's Chevy Chase, Maryland offices at the border of Washington, DC. The program is structured to provide both an educational component—to advance the

student's understanding of professional liability risk management in the performance of construction-related professional services—and a research assignment.

The fellow will analyze practice trends, investigate legal and contractual developments, and mine the Schinnerer claims files to address a specific source of risk, culminating in a report shared with policyholders, the design and construction press, and academic institutions. In addition to achieving a better understanding of the complex relationships among risk, liability, and contemporary professional practice, the student will be well-compensated. The

fellowship provides a stipend of \$7,000 for an eight-week commitment with a housing allowance of up to \$2,000.

Applicants for the fellowship must be U.S. citizens who intend to pursue a career in engineering, architecture, construction, or law. The fellowship is available to both undergraduate and graduate students currently enrolled in engineering or engineering management, architecture, business management, construction or program management, or law. More information, requirements, and the application documents are available on the Schinnerer website at www.PlanetRiskManagement.com/mitlunch.html. ♦

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COMMENTS

Risk Management Perspectives for the Construction Community

AGC-Led Coalition Releases New Contract Forms

Also In This Issue:

- Integrated Project Delivery Contracts
- Upcoming Events

For the first time there may be a challenge to the industry standard design and construction contract documents and forms published by The American Institute of Architects. Construction associations representing clients, contractors, and sureties have united to produce a family of standard agreements and forms through a coalition known as ConsensusDOCS. The effort, led by the Associated General Contractors (AGC) and supported by the Construction Owners Association of America (COAA) and other client groups, has modified existing AGC and COAA documents to form the basis of a program that stresses an industry-wide consensus process for the creation of contract documents. With an official release date scheduled for September 28, the new standard form contracts in this initial effort have been developed “to codify the industry’s best practices in construction agreements.”

The drafting process focused on representing the best interests of projects, rather than single parties. The drafting group claims that the documents provide fair risk allocation for all parties and focus on yielding better project results and fewer disputes. The drafting process was joined by two other client groups—the National Association of State Facilities Administrators and the Construction Users Roundtable—as well as other major construction contracting and subcontracting organizations. Currently, no professional societies or trade associations for design firms endorse ConsensusDOCS. It is likely that EJCDC or its individual sponsoring organizations—the National Society of Professional Engineers, the American Council of Engineering Companies, and the American Society of Civil Engineers—will consider endorsement after the initial publication of the ConsensusDOCS family.

ConsensusDOCS will include more than 70 contracts and forms addressing all project delivery methods. Electronic versions will be available through the AGC DocuBuilder software system, which allows for project-specific modifications. The coalition claims that the documents will address cutting-edge issues such as electronic communications and building information modeling. More information can be obtained at www.ConsensusDocs.org or from the Associated General Contractors at www.agc.org. ♦



Integrated Project Delivery Contracts Coming Soon

As developments in communication technology evolve, the desire to reduce inefficiencies in the design and construction process increase. Led by client groups frustrated with the present system of adversarial relationships and industry service providers looking for ways to match their financial exposure with increased profitability, efforts are being made to encapsulate the idea of integrated project delivery in new forms of contracting.

New Relationships Require New Contracts

In the past, two-party contracts have existed between the client and a single entity authorized to produce the project. Currently no accepted standard agreements that refabricate the contractual rights and obligations of more than two parties into a single agreement exist. As the blurring of the line between design and construction increases through building information modeling and other technological advances, the effort to include separate design, construction, and ownership entities in one project-specific, contractual arrangement appears to be moving to fruition.

Relationship contracting, where separate entities agree to share risks and rewards in an interactive design and construction effort, challenges the U.S. legal system's allocation of responsibility and liability and the insurance industry's reliance on such certainty. In addition, the financial industry's method of structuring loans and protecting the lender's investment is disrupted by an integrated project delivery system and contract that does away with the

accepted system of establishing fault.

It now appears that within a year, clients will have significant new choices in restructuring how they contract for the design and construction of their projects.

ConsensusDOCS Includes Tri-Party Agreement

Part of the initial release of documents and forms by the industry coalition program, ConsensusDOCS, will be a transformative agreement called the "Tri-Party Collaborative Agreement." The integrated project delivery agreement form will have three parties sign the same contract and

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create a core team. This core group convenes to make project-specific decisions. A tri-party agreement is basic to one form of integrated project delivery—the alliance contracting process. By creating a contractually obligated project core team, which may include key specialty contractors and consultants, consensus decisions during the design process and throughout construction should focus on the best interests of the project so that the three parties benefit by keeping the project on time and under budget.

According to Brian Perlberg, AGC, Senior Counsel, Construction

Law and Contract Documents, We're taking collaboration to the next level. It is really a new way of handling project delivery and facilitates the use of building information modeling delivery programs that have emerged.

Perlberg states that the fundamental philosophy of ConsensusDOCS in general, and the tri-party collaborative agreement specifically, is aligning parties' interests with superior project results. One aspect of this is direct communication among the parties to resolve potential claims before they become contentious. ♦

AIA Prepares Integrated Project Delivery Guide

The American Institute of Architects in partnership with the Institute's California Council is developing a guide to integrated project delivery. Based on the AIA California Council's document, "Integrated Project Delivery—A Working Definition," the guide will be a new online resource that will be provided free to AIA members in early November.

The AIA California Council developed an interdisciplinary group, the Integrated Project Delivery Task Force, representing the combined efforts of architects, engineers, contractors, subcontractors, clients, and attorneys to create "Integrated Project Delivery—A Working Definition." The guide that furthers the development of an integrated project delivery system is scheduled to be published same time as the 2007 AIA standard form agreements. In 2008 the guide will be used to assist the AIA contract documents program to develop a standard integrated project delivery contract form.

Overall Construction Spending Falls

According to the Commerce Department, construction spending fell unexpectedly by 0.4 percent in July. This was the largest drop recorded since January. The June report showed a 0.3 percent drop. The July analysis was expected to show no greater reduction in construction activity. During the first seven months of 2007, construction spending was 3.4 percent below the same period last year.

While the drop may seem minor as a percentage, the seasonally

adjusted annual rate of construction of \$1.17 trillion indicates a significant softening of the residential market that was not countered by increases in other construction segments. Private residential construction took its 17th straight drop to reach an annual rate of \$534 billion, the lowest since February 2004. Private construction overall declined 0.7 percent to an annual rate of \$880 billion, the lowest level since May, 2005.

Both private nonresidential construction and public construction increased to record levels but their gains were not sufficient to offset other losses. Construction of public projects reached its highest level on record by climbing 0.7 percent to \$289 billion. Educational construction rose by 1.9 percent and contributed significantly to the public project increase. Private nonresidential construction also set a record high by rising 0.4 percent to a \$346 billion annual rate. ♦

Upcoming Events

AAA Mediation Conference

After the success of its Construction Mediation Conference in Miami earlier this year, the American Arbitration Association is conducting the conference again, this time on the West Coast. The conference is subtitled “What You Can’t NOT Know” and will offer six presentations by industry experts on resolving costly and disruptive construction disputes.

The program, which explores the decision to mediate as well as the mechanics of the process, has added a seminar on strategies to use at the mediation conference table. The program is conducted in cooperation with Schinnerer, the only professional liability insurer among the conference’s 17 support groups.

The program will be conducted on Friday, November 9, at the Marina del Rey Marriott in Marina del Rey, CA. The conference registration fee is \$350. For more information on this event, please go to www.adr.org/events.

Schinnerer at AIA Conference

From December 2-4, The American Institute of Architects will host “The Future of Professional Practice,” a program examining “the next generation of integrated delivery, emerging technology, and practice management.” The conference will be held at the Capital Hilton in Washington, DC. Schinnerer is the only insurance sponsor of the conference.

On Monday, December 3, Lorna Parsons and Frank Musica, both of Schinnerer, will participate in a panel on “Exploring Legal and Insurance Issues in Collaborative Design.” There will be sessions throughout each day addressing advancements in design and communications technology, new methods and contracts for integrated project delivery, and increasingly demanding client expectations, among other topics.

The registration fee for AIA members is \$475; non-members pay \$550. For more information, go to www.aia.org/ev_pm_future07.

Thermal Performance Conference

The international conference: “Thermal Performance of the Exterior Envelopes of Whole Buildings X,” organized by the Oak Ridge National Laboratory, will be held from December 2-7, 2007, at the Sheraton Sand Key Resort in Clearwater Beach, Florida. This conference will present concurrent tracks on “principles,” in which research findings and projects are discussed, and “practices,” in which the practical applications of research and case studies are explored.

In addition, special topic workshops will be presented before and after the conference. The conference, co-sponsored by ASHRAE and the Building Environment and Thermal Envelope Council, takes place once every three years, allowing time to develop new research and technology applications.

Full conference registration is \$595. More information is available at www.ornl.gov/sci/buildings. ♦