



CLLA Southern Region Meeting

February 24-26, 2011

Royal Sonesta Hotel

New Orleans, LA

Construction Law Programming:

February 25, 2011

9:00-10:30am

Contingent Fee Based Complex Commercial Litigation (Is it Willy Wonka or the Wizard of Oz?)

The seminar explores many aspects of contingency based claims in the commercial litigation setting. We'll begin by examining whether or not it makes economic sense for the practitioner and the client to pursue a contingency based claim. Next, we'll discuss the pros and cons and some special considerations of navigating a contingency claim through the court system and through the arbitration arena. We'll touch on the impact of a defendant's bankruptcy on the contingency claim. Finally, we'll wrap up the seminar with a discussion on how to allocate resources within your law office to make contingency claims a successful and profitable endeavor for your firm.

Peter Robertson, The Robertson Firm, Gainesville, FL

10:30-12:00pm

Enforcing and Litigating Mechanics Liens Rights

Suppliers and Subcontractors in the construction industry have the advantage of secured creditor status for most of their sales, as long as these mechanic's lien rights are carefully preserved. Even minor failure to follow the rules will leave you unsecured. True mechanic's lien litigation is a "Battle between Innocents" in which innocent suppliers, owners, institutional lenders and other creditors of the debtor will actively contest and litigate the validity of the mechanic's lien. Successfully preserving your rights will establish your priority over other innocent creditors of the insolvent customer.

Rather than discuss the precise procedure of filing a mechanic's lien, which varies from state to state, this course will focus on practical problems and the dynamic of the "Battle between Innocents" that all mechanic's lien litigators will face. Many mechanic's lien principles are similar in most states. A few core principles do vary, with dramatic differences in result. This session will consider common rules in most states and differences you must recognize.

Some states have "prefiling" requirements before delivery of goods. The client will have no opportunity at security if this procedure is missed early in the project. All states require some action shortly after delivery. How do you know when your work is complete? How do you "trace" your materials to particular properties and allocate the amount of each lien?

Does it matter whether your customer has been paid on the project? Remote Contractors must know which states have a "defense of payment," requiring the owner or general contractor to pay for a project only once. Whether or not your lien is valid, the "priority" of your lien compared to other claimants can often determine whether you get paid. What if your customer files bankruptcy or the property is sold?

Mechanic's lien litigation is often complex, with many "necessary parties" with varying interests. What are the best strategies for settlement of a mechanic's lien case, where multiple innocent mechanic's lien claimants, an owner, a general contractor and multiple institutional lenders face an insolvent debtor and a limited fund? Finally, we will discuss common problems with mechanic's lien waivers and how to avoid inadvertently signing away your security rights. Can you waive your security rights in your contract or in progress payment waivers?

James D. Fullerton, Fullerton & Knowles, P.C., Clifton, VA