

Marilyn Klinger
Partner, Los Angeles, California

Construction
 Surety



MARILYN KLINGER

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Current Scope of Practice

Marilyn Klinger heads the Construction Practices Group for Sedgwick out of the Los Angeles office, and is involved in all aspects of construction law on a state and national level. She represents the full spectrum of the construction industry, from owners, contractors, subcontractors, and sureties. Her practice includes time-related claims and litigation (e.g., delay/impact), legal advice and counsel regarding the contracting process (e.g., bidding and contract disputes/performance bond claims), payment enforcement/defense (e.g. payment bonds/mechanic's liens/stop notices), administrative and scope claims and litigation (e.g., differing site conditions, change and extra work orders/inadequate plans and specifications, and subcontractor substitutions), and counseling and transactional services to the construction industry (e.g., general advice and counsel, including contract preparation and negotiation).

In addition, Ms. Klinger has extensive experience in dispute resolution including litigation, trial, appeals, arbitration, and mediation.

Affiliations, Activities and Accomplishments

2013 Co-Chair of ABA/Construction Forum Annual Meeting to be held in Southern California.

2012 Vice-Chair of AGC of California Legal Advisory Committee (Chair in 2013).

Chair, commencing 2010, American Bar Association/Construction Forum Law Student Writing Competition.

Recipient, 2010 James Acret Award for outstanding achievement in construction law legal writing.

Member, Associated General Contractors of America Contract Documents Committee.

Vice Chair, commencing 2012, Associated General Contractors of California, Legal Advisory Committee.

Member, ABA/Forum on the Construction Industry, Steering Committee, Division 5, Contract Negotiation, Administration and Performance.

Former Chair of the Fidelity and Surety Law Committee (FSLC) of the ABA Trial Torts and Insurance Practice Section.

Former Chair of the Fidelity and Surety Committee and member of the Construction Law and Litigation Committee of the International Association of Defense Counsel.

Presentations & Publications

Ms. Klinger's speaking engagements include:

- Annual guest lecturer, Stanford University's Graduate School of Engineering, Construction Management (ongoing since 1993).
- Active participant in the ABA Forum on the Construction Industry since 1985, including speaker at the 2010 Annual Meeting, the 1998 Joint Program of the ABA Construction Forum and TIPS/FSLC and co-moderator for the 1996 and 1997 joint programs and current member of Steering Committee, Division 5.
- Speaker, "AIA A201 vs. ConsensusDOCS: A 10-Round Bout to Determine which is the Fairest Contract of Them All?" Construction SuperConference, San Francisco, CA (December 14, 2011)
- Speaker, "Hammers, Nails and Lipstick," CFMA, Las Vegas, NV (October 26, 2011)
- Speaker, "Contract Litigation Insurance: A Game Changer or Not," AGC of California Legal Advisory Committee, Dana Point, CA (September 30, 2011)
- Speaker, "Curve Ball Issues Affecting the Surety," Pearlman, Seattle, WA (September 9, 2011)
- Co-Speaker, "Differing Site Conditions," WPL Publishers Webinars, Los Angeles, CA (August, 24, 2011 and September 21, 2010)
- Speaker, "Contract Litigation Insurance—A Game Changer or Not," WSSC, Seattle, WA (May 13, 2011)
- Speaker, "Killer Bond Forms," HCC Surety Underwriters, Los Angeles, CA (March 17, 2011)
- Moderator, "Differing Site Conditions: The Big Game of Shifting Risk," CMAA, Southern California Chapter, Long Beach, CA (January 28, 2011).
- Speaker, "Everything You Ever Wanted to Know About Surety But Were Afraid to Ask," AGC of California, Legal Advisory Committee, Carmel, CA (October 15-17, 2010).
- Speaker, "Top Ten Mistakes Contractors Make and How to Avoid Them," Engineering Contractors Association Legal Program, Downey, CA (October 1, 2010).
- Speaker, "Top Ten Mistakes Contractors Make and How to Avoid Them," Surety Association of Washington, Seattle, WA (September 28, 2010).
- Speaker, "Delay Damages," WSSC, Seattle, WA (May 20, 2010).

- Speaker, “Pursuing Payment: Damned If You Do; Damned If You Don’t,” ABA/Construction Forum Annual Meeting, Austin, TX (April 23, 2010).
- Moderator, “The Business Ethics Model For Contractors Performing on Government Projects—What You Should Know,” Vendome Construction SuperConference, San Francisco, CA (December 11, 2009).
- Speaker, “A New Era In Standard Form Construction Documents: AIA vs. Consensus Docs,” NAWIC (National Association of Women In Construction) Annual Planning Conference, San Francisco, CA (October 2, 2009).
- Speaker, “The AIA’s Revisions to Form A201 General Conditions,” Surety Underwriters Association of Northern California, San Francisco, CA (April 28, 2009).
- Speaker, “Avoiding Project Failure in a Difficult Economy,” 5th Annual Pacific Builders Safety Expo, Sacramento, CA (April 8, 2009).
- Speaker, “Impact of Contract and Bond Provisions on Projects and Construction Disputes,” WCCC (Western Council of Construction Consumers) Annual Conference, Los Angeles, CA (March 12, 2009).
- Speaker, “Point – Counterpoint: Is There Life Before and After Termination?,” Construction SuperConference, San Francisco, CA (December 11, 2008).
- Co-Presenter, “Construction Project Disputes from the Legal Perspective,” CSI Webinar, (September 2, 2008).
- Presenter, “Your Project is a Sinking Ship... How to Avoid the Leaks (Reasons Why Contractors Fail),” National Association of Women in Construction (NAWIC), Los Angeles, CA (August 19, 2008).
- Moderator, “The Surety's Indemnity Agreement - Law & Practice,” ABA, Kansas City, MO (May 8, 2008).
- Speaker, “Planning, Design and Project Management for the 21st Century,” AOD 2008 National Conference West, Santa Monica, CA (May 5, 2008).
- Speaker, “10 Reasons Why Contractors Fail,” 4th Annual Pacific Builders Safety Expo, Sacramento, CA (April 1, 2008).
- Moderator, Construction SuperConference, San Francisco, CA (December 13, 2007).
- Speaker, “Construction Law from Contract to Closeout: Bonds, Insurance & Indemnity,” Lorman Seminar, Pasadena, CA (December 5, 2007).
- Speaker, “California Fair Claims Settlement Practices Regulations,” The Hartford Group, Hartford, CT (August 29, 2007); St. Paul Travelers, Hartford, CT (August 28, 2007).
- Speaker, Recorder Women's Roundtable, San Francisco, CA (August 8, 2007).
- Speaker, “California Fair Claims Settlement Practices Regulations Seminar,” presented to various bonding companies through-out the United States--ongoing.

- Speaker, “Killer Bond Forms and Contract Terms,” at Joint Meeting of Surety Underwriters Association of Southern California and Surety Claims Association of Los Angeles (March 1, 2007).
- Panelist, “The Mediator and the Advocate-Expectations and Failings,” Goliath vs. Goliath -- Organizing the Construction Case for Mediation Conference, American Bar Association, Dispute Resolution Section, New York, NY (February 23, 2007).
- Speaker, “Construction Surety/Bonds,” Canadian Defense Lawyers Second Annual Insurance Coverage Symposium, Toronto, CN (February 23, 2006).
- Guest Lecturer, “Special Topics in the Business of Construction,” California State University at Chico, Chico, CA (November 2005).
- Speaker, “Current Trends in Construction Bonds,” Construction Specifications Institute, San Francisco, CA (October 2005).
- Creator, ABA/TIPS/FSLC Outreach Back-to-Basics Program, Contract Surety Claims Handling, Hartford, CT, Chicago, IL, Seattle, WA (March, May, July 2004).
- Creator of ABA/TIPS/FSLC Mid-Winter Meeting “A Day in the Life,” Fidelity and Surety Claims Handling (January 30, 2004).
- Presenter, “Extra-Contractual Damages Considerations,” ABA FSLC seminar on bond defaults (April 1997).
- Panelist, ABA Joint Program of the ABA Construction Forum and TIPS/FSLC (January 1997).
- Panelist, ABA Alternative Dispute Resolution Section program focusing on construction issues (August 1997).
- Speaker, Twentieth (2005), Eleventh (1997), Tenth (1996), and Ninth (1995) Construction SuperConferences, San Francisco, CA.
- Moderator of IADC joint program regarding Business Torts (July 1997).
- Presenter, “1995 Update on Surety Law,” Surety Claims Institute (June 1995).
- Speaker, Construction Industry Conference co-sponsored by the California Certified Public Accountants and AGC (1995).

Ms. Klinger’s recent publications include:

- Co-Author, “Termination for Convenience: How Enforceable Is It?” *The Voice*, (August 2011)
- Co-Author, “FAR Business Ethics: The Basics,” *Construction Executive*, (December 2010)
- Author, “Differing Site Conditions Revisited,” *Modern Contractor Solutions*, (September 2009)

- Author, “2009 Legal Firms Directory – Interview with Marilyn Klinger,” *California Construction*, (July 2009)
- Co-Author, “Suppliers’ Remedies for Non-Payment, Part I, Mechanic’s Liens, Part II, Stop Payment Notices, Part II, Payment Bond Claims” *ASA Insights*, (2009)
- Co-Author, “Can Lawyers Collaborate? Ethical Implications for Lawyers Involved in Collaborative Projects and the ConsensusDocs 300 Contract,” *www.agc.org*, (May 2009)
- Author, “Legal Enforcement of Subcontracts,” *Construction Executive*, (April 2009)
- Author, “Common Legal Disputes on Construction Projects,” *E C & M Magazine*, (March 2009)
- Co-Author, “Appealing A LEED Certification,” *Modern Contractor Solutions*, (February 2009)
- Author, “Killer Bond Forms and Contract Provisions—A Series,” *Sedgwick’s Construction Practices Newsletter* (2008-2009)
- Co-author, “A Subcontractor’s Duty To Defend Under An Indemnification Provision,” *Modern Contractor Solutions*, (Sept 2008).
- Co-author, “California Courts of Appeal Split on Whether Disclosure of Privileged Material to the Government Under Threat of Prosecution is Coerced” *LADC Fidelity and Surety Committee Newsletter* (August, 2008).
- Co-author, “Cardinal Change and Abandonment: Applications for Contractors, Owners, Sureties,” *2008 Surety Market Report - ENR Supplement* (June 16, 2008).
- Co-editor, “The Surety’s Indemnity Agreement – Law & Practice,” ABA Publication (2008).
- Co-author, “Did You Cross Your t’s And Dot Your i’s, The Importance of Complying With Contractual Notice Requirement,” *Modern Contractor Solutions* (April, 2008).
- Author, “Performance Bond Claims: What an Owner Needs to Know,” *Engineering News – Record 2007 Surety Market Report* (June 18, 2007).
- Author and moderator, “Killer Bond Forms & Contract Provisions,” 2007 Western States Surety Conference, Seattle, WA (May 4, 2007).
- Co-editor, “The Construction Project,” ABA publication (2006).
- Co-editor, Sedgwick, Detert, Moran & Arnold’s *California Fair Claims Settlement Practices Regulations Desk Book* (2006 Edition).
- Author, “How A Surety Can Do Everything Right and Still Get Sued – And By Its Own Principal!” Surety Claims Institute, Cape Cod, MA (June 21, 2006).
- Updates, “California Practice Guide, Insurance Litigation,” Chapter 61, *Surety Bonds*, The Rutter Group (2005).

- Co-author and presenter, “The Contract Performance Bond,” chapter for the *ABA Law of Suretyship*, 2nd edition (April 2002).
- Co-editor, “The Surety’s Indemnity Agreement: Law & Practice,” ABA publication (January 2002)/Co-moderator, “The Surety’s Indemnity Agreement: Law & Practice,” ABA/TIPS/FSLC Mid-Winter Meeting (January 2002).
- Author, “The Surety’s Right of Equitable Subrogation versus The U.S. Government’s Right to Sovereign Immunity,” *ABA Tort & Insurance Law Journal*, Vol. 36, No. 1, (Fall 2000).
- Co-author, “Mechanic’s Liens and Other Remedies,” Chapter 10 in *CEB* (ongoing since 2000).
- Author and presenter, “The Surety’s Rights of Equitable Subrogation versus the U.S. Government’s Right to Sovereign Immunity,” *Torts & Insurance Law Journal* (2000).
- International Risk Management Institute Expert Commentator; published quarterly at www.irmi.com.
- Co-author and presenter, “Who is Entitled to Recover?” chapter for the ABA Payment Bond Book (1998, 2001)/Speaker, ABA/TIPS/FSLC Mid-Winter Meeting Program On Payment Bonds (January 1998).
- Author, “An Evolution of Surety Claims Handling,” ABA’s Tort and Insurance Law Section’s on-line magazine, *e-DICTA* (1998).
- Author, “The Times They Are A Changin,’ An Evolution of Surety Claims Handling for Suretyscope,” *Journal of the National Association of Surety Bond Producers* (1997).
- Co-author, “The Dark Side of ADR,” *Construction Business Review*, Volume 7, Number 4, (1997).
- Co-author and presenter, “The Measure/Scope of Damages Against a Performance Bond Surety,” International Association of Defense Counsel (February 1997).
- Author and presenter, “A Toast to the Underwriters: The Underwriting Process and Salvage for the Surety,” (1997).
- Co-author, “Successor Developers: Untapped Opportunities for Subdivision Bond Sureties, IADC, *Defense Counsel Journal* (1995).
- Co-author, “Suretyship and Guaranty Law,” revisions and updates to Chapter 7, *Matthew Bender’s Business Insurance Law and Practice Guide* (May 1994).
- Co-author and presenter, “The Contract Performance Bond” and “Dispute Between the Obligee and Principal,” chapters for the *ABA Law of Suretyship* (1993-2000).
- Co-author and presenter, “ERISA Preemption and the Surety,” *Torts & Insurance Law Journal* (1993).
- Co-author, “Sedgwick’s Guide Through the Bankruptcy Maze,” (December 1992).

- Author, “Can a State Rescind Its Equal Rights Amendment Ratification: Who Decides and How?” *Hastings Law Journal*, Vol 23, No. 4, (March 1977).
- Co-sponsor, Western States Surety Conference.

Education

Ms. Klinger received her B.S. (1975), *cum laude*, from the University of Santa Clara and her J.D. (1978) from the University of California, Hastings College of the Law. While in law school, she was a member of the Thurston Honor Society, the Order of the Coif, and the *Hastings Law Journal* editorial staff.