



*American Bar Association Forum on Construction*

## **Division 12: Owners and Lenders**

HISTORY AND PAST CHAIRS (1997-2013)

April 2013: Nicholas Garzia and Claramargaret Groover



Division 12 of the ABA Forum on the Construction Industry provides its members, the construction industry and those we serve educational opportunities and practical advice on the unique concerns of owners and lenders in all aspects of the construction process. Since the inception of Division 12 in 1997, the group has sought to insert the perspective of owners and lenders into the discussions of the events of the day affecting the construction industry. In so doing, this group has enriched the practices of its members by being a source of scholarship and community within our corner of the legal profession. The current members and leaders of Division 12 owe a debt to those leaders who originally outlined the framework of the organization, those who built upon it to create a special network of practitioners interested in the viewpoints of owners and lenders in the construction industry, and all those leaders and members who have instilled in our organization a culture of scholarship, dedication and warm collegiality and collaboration. In tribute to countless hours of effort and strong dedication, we give a sketch of our division's history and those who have given of their time and expertise to serve as its leaders.

### **Division 12 History**

"Where were the owners when these documents were being discussed?" This question, uttered at a panel discussion in the Forum's fall 1997 meeting, led to the creation of Division 12.

In 1996, Division 2 (Contract Documents) was working with the AIA Document Task Group to provide comments on the new series of documents scheduled for release in 1997, including the AIA Document A201, General Conditions for the Contract for Construction, and AIA Document B141, Agreement between Owner and Architect. The 1997 series of AIA documents were released shortly before the Forum's meeting in fall 1997 providing an opportune theme for the meeting. Division 2, tasked with organizing the meeting, drew from the experience working with the AIA Document Task Group for several plenary sessions.

A particularly hot topic generated by the release of the 1997 series was the mutual waiver of consequential damages provision of the A201. That provision had fueled some discussion as to whether it was truly mutual because some questioned whether the rights of builders and designer balanced perfectly with those of owners and lenders. Capitalizing on this controversy, the organizers of the program compiled a panel of three speakers for a plenary session to discuss the mutual waiver from contrasting perspectives: Bill Ferstom, outside general counsel to the AGC, speaking for builders and the trades; Howard Goldberg, outside counsel to the AIA Contract Documents Committee, for designers; and Lynn Axelroth, for owners and lenders.

The panel discussion was intense—heated at times—with the panel debating whether the new provision effectively balanced the interests of all project participants. Axelroth, as part of her role in the panel discussion, emphasized potential concern of owners and lenders. The panel also noted that the 1997 revisions were crafted with heavy influence of construction and design trade groups, but the revisions

did not enjoy the same benefit of a strong and organized voice for owners and lenders. Axelroth, in a completely unrehearsed and unplanned moment during the discussion, volunteered to bring those viewpoints together for owner and lender's perspective.

Later that same evening, Leslie King O'Neal, the chair of the Forum at the time, found Axelroth at one of the program's social events. O'Neal told Axelroth that she and several members of the Governing Committee attended the panel discussion early that day. As O'Neal explained, some of those members and others in attendance came up to her after the session to express support for the idea of forming a special group to review issues particular to owners and lenders. The Forum had strong groups looking from the perspective of builders, the trades, and designers, but no group doing so for owners and lenders. O'Neal asked Axelroth if she would agree to develop the idea of forming a new Forum division to focus on issues and challenges from the owner and lender perspective and present the idea for the new division to the Forum's Governing Committee.

Axelroth recruited her then-fellow member of the Division 2 (Contract Documents) Steering Committee, George Meyer, another strong voice for owners and lenders, to help push the idea for a new division. Axelroth lead the presentation to the Governing Committee, explaining that designers and contractors were already strongly represented with industry groups (such as the AIA and the AGC) and within the established divisions of the forum. Within the construction industry, there really was not focal point for owners to reflect their interests, and that the new division to be formed would be a way of bringing a voice to the owner's interest. The Governing Committee was persuaded to create the new division and selected Axelroth as the first chair. The January 1998 edition of Construction Forum News reported O'Neal's announcement of the creation of Division 12.

Axelroth immediately took to the task of lining up a number of strong volunteers for the first steering committee. The first several years of the Division focused on putting in place a strong structure for the organization. Shortly later, under the leadership of the second chair, George Meyer, and successive chairs, Division 12 focused on making an ever more advanced contribution to its members and the Forum at large. This included substantive work such as assisting with organization of Forum programs, scribing many publications, and the developing of a treasure-trove of practice guides and checklists. A high point in this history of the Forum's youngest division came in 2010, when its former division chair, Meyer, was installed as the chair of the Forum. Division 12 will contribute its second chair of the Forum when Steve Lesser takes the chairmanship in 2014.

Coming full circle from the question that inspired the new division, the AIA Document Task Force now regularly solicits comments from Division 12, seeking to obtain the perspective of owners and lenders. In this and other ways, the leaders and members of Division 12 have created a strong voice for owners and lenders in the construction industry. As Division 12 completes its fifteenth year in 2013, it continues forward with the mission to educate and provide practical advice on the unique concerns of owners and lenders in all aspects of the construction process.

### **Our Past Chairs**

Since the Forum established Division 12 in 1998, we have enjoyed continuous committed and strong leadership. Each of our leaders spotlighted below contributed to the development, expansion and evolution of Division 12 into the active, collegial, and well-organized structure that exists today.



## Lynn R. Axelroth

### Ballard Spahr (Philadelphia)

*Served as Chair from 1998 to 2001*

### Involvement in the ABA Construction Forum

In 1998, Lynn Axelroth was appointed by the Governing Committee as the founding chair of the newly created Division 12. After three years of service, Lynn moved up to serve on the Governing Committee.

### Key Accomplishments as Division 12 Chair

Lynn Axelroth led the first steering committee composed of George Meyer, Ross Altman, Christine Eakle, Michael Green and Wearen Hughes with Mary McElroy, 1994 Chair of the Forum, serving as a special advisor. Their initial efforts included identifying the mission and recruiting membership from Forum members who represented owners and lenders. The Division also created a list of owners groups and related entities, sponsored a program workshop, and co-sponsored a second workshop with Division 10-Legislation and Environment. Lynn, importantly, began the process of reaching out to the Contract Documents Committee of the American Institute of Architects (AIA) to begin the process of establishing the mutually beneficial working relationship that later flourished as the Division took shape and grew.

### Professional Biography

Lynn Axelroth is a leading real estate and construction lawyer, accomplished in transactional as well as dispute resolution of complex development and project financing matters. Her representative clients have constructed a world-class concert hall, a Major League Baseball park and spring training facility, transportation infrastructure, healthcare facilities, and mixed-use developments, among many others. Lynn is a fellow in the American College of Construction Lawyers and in the American College of Real Estate Lawyers, and a commercial and construction arbitrator with the American Arbitration Association. She was named one of the Top 50 Women Leaders in the Law in Philadelphia and names as one of five lawyers most significantly impacting commercial real estate in Philadelphia in the last 25 years. She writes and speaks extensively and serves on the editorial board of the *Journal of the American College of Construction Lawyers*. Lynn has also received awards for her community service .



## George J. Meyer

### Carlton Fields (Tampa)

*Served as Chair from 2001 to 2003*

### Involvement in the ABA Construction Forum

George was appointed by the Governing Committee to and served as a founding member of the Division 12 Steering Committee.

After serving as the Division 12 chair, George was appointed to the Forum's Governing Committee, on which he served from 2004 to 2007. Later, he was nominated, ran, and was elected as Chair of the Forum, which he served as 2010 to 2011.

### Key Accomplishments as Division 12 Chair

During George's leadership of the division, he sought to improve the working of the Division by establishing a subcommittee structure, one of the first divisions in the Forum to do so. He recruited members of the Steering Committee to chair new subcommittees to focus on membership, programs, and publications. As a result, during George's chairmanship membership increased. Division 12 also contributed to the programs, including, prominently, the 2003 Annual Meeting in Boston, which George co-chaired. The Publications Subcommittee also generated the idea of compiling a resource for owners when reviewing standard industry contracts. That idea germinated into what became "The Construction Contracts Book", edited by Division 12's Dan Brennan and published by the Forum in 2005. This successful and efficient subcommittee structure is still in place and has served as a model for other divisions in the Forum.

George also carried forward the work of the Division to encourage and grow the connection between Division 12 and the AIA Contract Documents Committee. During George's chairmanship, he was invited to the AIA headquarters as the representative of Division 12 to meet with the Committee and cement the relationship.

The Steering Committee in place during George's chairmanship later produced other Division 12 leaders, including Lizz Patrick, Steve Lesser, and Dan Brennan.

### Professional Biography

George Meyer is a preeminent construction and real estate lawyer in Florida, with extensive experience representing owners, developers, contractors, and designers on large, complex development projects, including major sports complexes such as CitiField (Mets MLB



Ballpark), Heinz Field (Pittsburg Steelers NFL Stadium), Orlando Magic NBA Arena, Florida Marlins Ballpark, important cultural institutions, including the Miami Art Museum, and Florida Aquarium, as well as convention centers, airports, hospitals, education facilities, hotels, casinos, mixed use, manufacturing facilities, pipelines, refineries and railroads all across the country. George is board certified in Construction Law by The Florida Bar and is a fellow of the American College of Real Estate Lawyers and American College of Construction Lawyers. He is currently Immediate Past Chair of the Real Property, Probate and Trust Law Section of The Florida Bar. He is the recipient of the RPPTL Section's Construction Law Committee's 2012 Lifetime Achievement Award.

## A. Elizabeth (Lizz) Patrick

### Patrick Law Group, LLC (Atlanta)

*Served as Chair from 2003 to 2005*

#### **Involvement in the ABA Construction Forum**

Lizz has been active in the Forum since 1996 and was an original member of the Division 12 Steering Committee. She served on the Membership Committee of the Forum and later on the Governing Committee. Lizz was also a founding Co-chair of the Diversity Committee. She was also the co-chair of the 2007 Fall Meeting Program in Newport, Rhode Island.

#### **Key Accomplishments as Division 12 Chair**

Lizz's goal during her chairmanship was to build on the work of George Meyer to maintain an efficient and effective governing structure of the Division to become much more active and consistent. Lizz focused on putting on quality Division meetings at the annual meeting and fall meetings, bringing in speakers from other associations focused on owner and lender issues. Division 12 supplied an increasing number of speakers to Forum programs and publications.

Also under Lizz's leadership, Division 12 became progressively more active with the AIA. Leading up to the 2004-series revisions, members of Division 12 were able to lend input to the AIA Contract Documents Committee from the owner and lender perspective.

#### **Professional Biography**

Lizz Patrick is a leading construction and procurement in Georgia and nationally. She has prepared and negotiated thousands of commercial, construction and procurement contracts, ranging from master agreements for the development and installation of telecom infrastructure and equipment to global sourcing agreements and other logistics system development, installation and servicing contracts. Lizz has assisted a number of clients, to develop standardized contracts for operational use and support, along with providing specific and tailored in-house training and procedures for the use of those forms. Her clients include Fortune 100 and other well-known profit and not-for profit companies, ranging from health care systems and office and retail developers, telecommunications, media to cosmetics businesses. Lizz was named in the International Who's Who of Top Construction Lawyers in the world, as well as in Chambers U.S.A. She has also been selected as a Georgia Super Lawyer from 2004-2012, as one of the Top 50 Female Super Lawyers, and as a Law Dragons New Star.





## Steven B. Lesser

### **Becker & Poliakoff (Ft. Lauderdale)**

*Served as Chair from 2005 to 2007*

### **Involvement in the ABA Construction Forum**

Steve Lesser served as Division 12's fourth chair starting in 2005, after being active in the Forum since 1994. Steve first served on the steering committee for Division 1 – Alternative Dispute Resolution before becoming active in Division 12. After his service as the Division 12 chair, Steve moved onto the Governing Committee in 2007, served as Governing Committee Liaison for the Fall 2010 Miami program, and as Chair of the Division Chairs Committee through 2013. He became Chair-Elect of the Forum in 2013 and will be the second Division 12 Chair to serve at the Forum's highest post in 2014.

### **Key Accomplishments as Division 12 Chair**

Under Steve's leadership, the Division undertook monthly Steering Committee calls, which featured the Hot Topics. These discussions focused on substantive law or procedure and practice and were led by lawyers and consultants who discussed their experience with the issues. During this time, the Division commenced breakfast meetings at the Forum programs, including joint division breakfasts. Also, the American Institute of Architects invited the Division's input on behalf of owners and lenders for the anticipated 2007 edition of AIA standard form contract documents. Steve, Stan Dowbrowski and Chris Dunn travelled to Denver to meet personally with the committee. From Steve's Division 12 steering committee emerged Dan Brennan to take the lead at the Annual Program in Puerto Rico in 2007.

### **Professional Biography**

Steve Lesser is a shareholder in the firm of Becker & Poliakoff and chairs its Construction Practice Group. Steve is a Florida Bar Board Certified Construction Lawyer, chair of The Florida Bar Construction Certification Committee, former chair of the Broward County Bar Association's construction committee, and Florida Bar Journal editorial board chair. He is a prolific writer who is published in the *ABA Journal*, *Florida Bar Journal*, *The Construction Lawyer*, *Construction Litigation Reporter*, *Dispute Resolution Journal*, *Trial Diplomacy Journal*, among others, on topics ranging broadly from technical trial tactics, construction contracts and defect litigation, professional ethics, and legal writing. He is AV-rated, is listed in Chambers USA America's Leading Lawyers for Business and has been a Florida Super Lawyer since 2010. Steve was named Construction Lawyer of the Year for 2011 for South Florida by Best Lawyers in America.



Previous to his involvement with the Forum, Steve was active in the Torts and Insurance Practice Section and chaired the Special Standing Committee on Professionalism. He has spoken at the ABA National Meetings and at Forum meetings in Puerto Rico and in teleconferences. Steve successfully represented a homeowner in a landmark construction case which reshaped Florida view of the economic loss doctrine. Steve has received awards for his community service including as a leading volunteer in a youth soccer program benefitting athletes with disabilities.

## Daniel S. Brennan

### Laurie & Brennan (Chicago)

*Served as Chair from 2007 to 2009*

### Involvement in the ABA Construction Forum

Dan Brennan became active in the Forum in 2002 and served as editor of the *Construction Contracts Book*, a volume which emerged from the Division's informal "checklists" series. Dan is on the Governing Committee where he serves on the marketing, technology, and SPEC committees. Dan is a member of the Governing Committee and serves as its liaison for the Forum's Fall 2013 meeting in Washington, D.C.

### Key Accomplishments as Division 12 Chair

Dan Brennan continued the Forum's outreach to owner groups, specifically involving CMAA. His leadership team continued the Division's advisory role with the AIA and Dan with steering committee members, Stephen Seeger, Ron Messerly, and Claramargaret Groover, met with the AIA subcommittee revising the A312 Performance and Payment Bonds. During this period, Division 12 members contributed to the updated contracts and checklists books. The Division continued its monthly conference calls and Top 10 Lists. The monthly calls continued to involve younger construction lawyers in support of a Forum initiative. Dan's steering committee has advanced two more chairs: Stan Dobrowski and Chris Dunn.

### Professional Biography

Dan Brennan is a founding partner of Laurie & Brennan, is an Illinois Super Lawyer, and is listed as a top construction lawyer by Chambers USA, in *Expert Guides* in the USA Best of the Best 2012, and in *The International Who's Who of Construction Lawyers*. Dan concentrates his practice on advising owners, designers and contractors on risk management in the construction process; prosecuting and defending construction claims including professional negligence, cost overrun, and delay claims; negotiating and drafting construction and design contracts for architects, engineers and owners; and advising clients with respect to design and construction of accessible facilities under Title III of the Americans with Disabilities Act and the Fair Housing Act.





## Stanley J. Dobrowski

**Calfee, Halter & Griswold LLP (Columbus, Ohio)**

*Served as Chair from 2009 to 2011*

### **Involvement in the ABA Construction Forum**

Stan became active in the forum in 1999. He joined the Division 12 Steering Committee in 2003 and he currently serves on the Forum's Marketing Committee.

### **Key Accomplishments as Division 12 Chair**

During Stan's membership on the Steering Committee, Stan worked to expand and improve outreach to other construction industry organizations. His tenure as Division chair coincided with a push from the Forum to build relationships with outside organizations. Under Stan's leadership, leveraging the expertise and recourses of the Division 12, focused on building connections with the Construction Owners Association of America (COAA). Stan, together with Andy Ness, Ron Messerly and Claramargaret Groover, negotiated with COAA on the Forum's behalf to put in place an expression of mutual interest (EMI) that formalized the commonalities of interests and resolution to cooperate and collaborate on future industry initiatives. Through this relationship with COAA, a member of ConsensusDocs, and the relationship Stan cultivated with the executive director of ConsensusDocs, Division 12 was able to offer comments to first revisions of several preliminary versions of ConsensusDocs forms, many of which influenced the final, published versions of the documents. Stan also worked to strengthen Division 12's connection to the AIA, including bringing in speakers from the AIA for monthly telephone conferences. Division 12 provided comments to the AIA on several forms under review during Stan's tenure.

Stan along with several other division chairs persuaded the Governing Committee to allow division breakfast programs at all Forum meetings. (Formerly, the division breakfasts occurred only at the Annual Meeting and were essentially business meetings for the steering committee.) Stan pushed for division breakfasts to include meaningful substantive programs, which have now become standard within the Forum, and expanded the Division dinners to include more members and to provide an opportunity for members to foster connections within the Division.

### **Professional Biography**

Stan has been appointed as special counsel by the Ohio attorney general to draft standard bidding and construction documents and design professional and construction manager agreements for most state agencies and institutions, as well as for state-assisted school facilities. He has also been appointed as special counsel to resolve certain claims involving



roads and bridges. Stan has drafted and negotiated contracts and resolved disputes on behalf of design professionals, contractors and developers, including major projects such as state high-rise office buildings, performing arts venues, turnpike facilities and a variety of private projects. Stan co-chairs the Industry Outreach Committee of American Bar Association's Forum on the Construction Industry. He formerly chaired the Ohio State Bar Association's Construction and Government Contracts Committee and is a member of its Construction and State and Local Government Committees. Stan is a former chair of the Columbus Bar Association's Construction Law Committee and a member of its Government Agencies Committee. He is also a member of the Central Ohio Builders Exchange and a former member of the American Arbitration Association's Central Ohio Construction Advisory Council.



## Christopher S. Dunn

**Waller Lansden Dortch & Davis, LLP (Nashville)**

*Served as Chair from 2011 to 2013*

### **Involvement in the ABA Construction Forum**

Chris' involvement in the Forum traces back to his attendance at the Forum's 2002 Annual Meeting in San Francisco. He attended the Division 12 breakfast at that event and has been involved in the form and the Division since. Chris was appointed chair of the Division after several years of service on the Steering Committee and completing numerous projects for prior chairs. Chris has contributed to four Forum books, including most recently, *Construction Defects* (2012) and *Construction Insurance: A Guide for Attorneys and Other Professionals* (2011). Upon completing his term as Division 12 chair, Chris will serve as the Forum's liaison to COAA.

### **Key Accomplishments as Division 12 Chair**

A focus of Chris' chairmanship was to reinvigorate the ties between Division 12 and the AIA. Chris sought out direct relationships within the AIA, including the managing director and staff attorneys, to let them know that Division 12 valued the relationship and stood as a resource to offer expertise and insights Division 12 members may offer from the owner and lender perspective. Chris organized the AIA Review Roster of Division 12 members who are pre-qualified and ready to respond to AIA's request for comments. Also, under Chris' leadership, he has brought in AIA representatives on a regular basis to participate in monthly division telephone calls and contribute to the discussion.

During Chris' leadership, he continued to improve Division 12 as a resource to its members by development of practice aids, tools and checklists. He brought together Division 12 members to work collaboratively to produce several new topical checklists, including pre-construction agreement, OCIPs, subcontractor default insurance, indemnity, sustainability and BIM checklists.

Chris also made it a standard to have speakers at each monthly telephone call to discuss current and developing issues of interest to the Division's members. The monthly series of presentations followed a theme, with the objective of providing another valuable resource to the Division's members.



### **Professional Biography**

Chris is a leading construction attorney in Nashville and has established a national practice advising owners and developers in sophisticated construction projects, particularly involving healthcare and manufacturing. He has both transaction and litigation expertise that enables him to advise clients at the front-end with custom design and construction agreements and insurance programs to creative and efficient dispute resolution, including representation of several ENR 400 owners. Chris is also a panel arbitrator for AAA in Nashville. In 2013, Chris was named “Lawyer of the Year” by *Best Lawyers in America* in Construction Law. Chris is a fellow of the Nashville Bar Foundation and has been named to the *Nashville Business Journal’s* “Best of the Bar”.