

## APRIL 2011 MEETING

Wednesday, April 13, 2011 (1.0 PDH)

### WORKSHOP

#### Risk Management & Professional Liability Law Seminar

**Speaker:** Marshall Rosenberg, Attorney with Barker Lyman, P.C., Tel. (713) 759-1990.

Marshall Rosenberg is an attorney at Barker Lyman. He has practiced with the firm since 1993. His practice areas include construction defect disputes, commercial real estate litigation, and professional liability actions involving architects, engineers, surveyors, and real estate professionals. Mr. Rosenberg holds a degree of Bachelor of Business Administration from the University of Texas at Austin (Finance) and obtained his law degree from Baylor University School of Law in 1991. He is a member of the American Bar Association, State Bar of Texas (Construction Law Section member), and Houston Bar Association.



#### WORKSHOP SUMMARY

To a crowd of about 65 at the HESS club, Mr. Marshall Rosenberg addressed issues related to risk management and professional liability.

Mr. Rosenberg discussed several risk and liability issues pertinent to both design professionals and contractors. He discussed real world situations that affect risk and liability and presented a few cases as examples.

Some of the key points presented were:

- Clear contract documents are the most important factor in risk management.
- Contract issues, terms, and clauses, including insurance, scope, team members, degree of difficulty, experience etc.
- It is not uncommon for the design professional to be the only solvent party at the end of a project, which makes the professional the most viable target in case of litigation.
- Law evolves over time, so effective legal counsel is essential for the design professional and for contract maintenance.
- Contracts must be clear and should place the burden of documentation and responsibility on the owner.
- A key component of an effective contract is a clear concise and well-defined scope of work.

Mr. Rosenberg went on to discuss several cases currently in court. The cases involved the duty of the professional when making onsite observations versus onsite inspections. The discussion emphasized the importance of current legal knowledge since cases may re-interpret contract law over time through court decisions.

Mr. Rosenberg summarized his workshop by advising the audience that litigation should be the last choice in disputes and that both mediation, which is non-binding, and arbitration, which is typically binding, are both preferable to lengthy and expensive trials.

### PAST PRESENTATIONS (click here)