

Section of Public Contract Law
321 North Clark Street
Chicago, Illinois 60610-4714

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DATED MATTER



American Bar Association
Section of Public Contract Law

Terminations Decanted



decant (di kant') v. trans. 1. to pour (e.g. wine) from the bottle into another vessel so as not to disturb the sediment. 2. to present the law of terminations in a fresh perspective, leaving musty old views behind.

November 5, 2004

Embassy Suites Napa Valley
Napa, California

One of the vintage aspects of Public Contract law is the ability of the sovereign to terminate its contractual obligations without the same consequences as those arising from a strictly commercial contract termination. There is an abundance of decisional law interpreting the right to terminate and the concomitant rights and obligations of the terminated contractor. With the advent of **non-traditional contractual vehicles** such as Other Transactions and IDIQ contracts, the concept of termination has become more complex.

In the area of default termination, there is also a settled body of law, owing in large part to the fact that terminations of major weapons systems programs can involve literally **billions of dollars** and often become potentially **fatal blows** to government contractors. Well-known cases litigated by large defense contractors can and do age for decades and provide a perennial source of good and bad law.

This program will allow you to imbibe the intricacies of **all aspects of terminations** in today's world of government contracting, including:

- What are the new developments in the **unending saga of the A-12 program**, and what can we expect in the coming months and years?
- What is the impact of recent terminations for convenience of some major government programs, and **how can a contractor plan** for such an event and not be devastated if it happens?
- What are the **peculiar problems facing subcontractors** that get caught up in the termination of their prime contractor, whether by default or for convenience?
- Can the government terminate a contract without calling it a termination? Is there such a thing as a contract **“dying on the vine?”**

Don't let your knowledge of terminations rest in the cellar. Let's uncork these topics and many more on November 5, 2004 in Napa, California. Join your colleagues and **learned experts** from government, industry and private practice as we collectively “decant” the law of terminations.

PROGRAM

Thursday, November 4, 2004

5:30 p.m. to 7:30 p.m.

Hosted Wine Tasting and Lecture

For the *sommelier* in all of us, the Public Contract Law Section is excited to offer, on a space-available basis, a wine tasting event to serve as an *aperitif* for the main course educational program on Friday. The tasting will be led by David Meagher (pronounced **ma-her**), a 20 year veteran of the Napa Valley hospitality industry and a member of the Napa Valley Tour Guide Guild.

David will tutor us in the basics and fine points of all things oenological, including:

- understanding varieties of grapes
- pedigrees of the vines imported from France and elsewhere
- tasting wines, expanding our perceptions of colors, bouquets, flavors and sensations of complex, multilayered wines
- purchasing and collecting fine wine.

Napa Valley is nestled in one of the finest grape-growing regions of the world. With its acres of vineyards and scores of famous wineries, it is a universally renowned destination for oenophiles and tourists who simply want to appreciate the beauty of the surroundings, the abundance of world-class restaurants and, of course, wines to match.

The per person cost of \$35.00 includes the sampling of several different red and white wines and light appetizers. Mr. Meagher's appearance is being sponsored by *Rogers Joseph O'Donnell & Phillips*. The seminar will wrap up early enough for you to continue your gustatory adventures with dinner at the various fine establishments within minutes of the hotel.

PROGRAM

Friday, November 5, 2004

7:30 a.m. to 8:15 a.m.

Registration

8:15 a.m. to 8:30 a.m.

Welcome

Mark D. Colley, Co-Chair

Annual and Quarterly Programs Committee
Holland & Knight LLP
Washington, DC

Craig K. Davis, Co-Chair

Annual and Quarterly Programs Committee
Craig K. Davis, PC
Columbia, SC

Judge Eileen Fennessy, Co-Chair

Annual and Quarterly Programs Committee
Department of Transportation Board of
Contract Appeals
Washington, DC

Scott E. Pickens, Co-Chair

Annual and Quarterly Programs Committee
Pillsbury Winthrop, LLP
Washington, DC

Introduction—Fall Program Co-Chairs

Peter D. Balch

Lockheed Martin Maritime Systems & Sensors
Moorestown, NJ

Patricia A. Meagher

Rogers Joseph O'Donnell & Phillips
San Francisco, CA

PROGRAM

8:30 a.m. to 10:00 a.m.

Terminations for Default

- How the A-12 saga has changed the law
- New ways to defend (or attack) a default termination
- A judge's perspective on termination for default developments

Neil H. O'Donnell, Panel Moderator

Rogers Joseph O'Donnell & Phillips
San Francisco, CA

Judge Cheryl Scott Rome

Armed Services Board of Contract Appeals
Falls Church, VA

Bryant Snee

Department of Justice
Washington, DC

David A. Churchill

Jenner & Block, LLP
Washington, DC

10:00 a.m. to 10:15 a.m.

Break

10:15 a.m. to 11:45 a.m.

Terminations for Convenience

- Maximizing the contractor's recovery
- Minimizing the government's expense
- Constructive terminations as breach of contract

Karen L. Manos, Panel Moderator

Howrey Simon Arnold & White LLP
Washington, DC

Richard J. Ostiller

Navigant Consulting, Inc.
Palo Alto, CA

PROGRAM

Brian Freck

ITT Industries
Clifton, NJ

Melvin J. Moe

Defense Contract Management Agency
Los Angeles, CA

12:00 noon to 1:30 p.m.

Luncheon

Presiding:

Patricia H. Wittie, *Chair*

Section of Public Contract Law
Oldaker Biden & Belair, LLP
Washington, DC

Speaker:

J. Clark Kelso

Special Advisor on Information Technology and
Chief Information Officer
State of California
Sacramento, CA

1:45 p.m. to 3:15 p.m.

Avoiding Subcontract Termination Pitfalls

- Reasons for terminating subcontracts
- Suggestions for handling subcontract termination claims
- Tips and tools for managing subcontract terminations

Jack Friery, *Panel Moderator*

Attorney at Law
San Diego, CA

Barry L. Cohen

Ernst & Young Government Contract Services
Washington, DC

Elizabeth A. Ferrell

Sonnenschein Nath & Rosenthal
Washington, DC

PROGRAM

Denise Bryson

Program Manager
United Defense, LP
Santa Clara, CA

Jack Walbran

Bryan Cave LLP
St. Louis, MO

3:15 p.m. to 3:30 p.m.

Break

3:30 p.m. to 5:00 p.m.

Termination of Non-Traditional Contracting Vehicles

- Terminations of DARPA OTA contracts
- Terminations and cancellations of GSA contracts
- Terminations on CRADAs, cooperative agreements and other non-traditional contracts

Nancy Dix, *Panel Moderator*

Gray Cary Ware & Freidenrich LLP
San Diego, CA

Liana D. Henry

Assistant General Counsel, Personal Property Division
General Services Administration
Washington, DC

Thomas E. McDonnell

Office of Naval Research
Arlington, VA

Jewel L. Miller

Attorney at Law
Washington, DC

Mary Shallman

Morrison & Foerster LLP
New York, NY

5:30 p.m. to 7:30 p.m.

Cocktail Reception

SECTION COUNCIL MEETING

On **Saturday, November 6, from 8:30 a.m. to 12:00 noon**, at the Embassy Suites Hotel Napa Valley, the Council of the Section of Public Contract Law will meet in **open** session to discuss issues of current importance to government contracts practitioners. All members and registrants for the Friday program are welcome.

Please complete and return the Registration Application if you will attend the Saturday Council Meeting.

CLE CREDIT

Accreditation has been requested for this program from every state (including California and Pennsylvania) with mandatory continuing legal education (MCLE) requirements for lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE." Attorneys seeking to obtain MCLE credit in Pennsylvania are required to pay state accreditation fees directly to the PACLE. Please be prepared to remit payment to the PACLE (\$2 per credit hour or any portion thereof) after the program. Certificates of attendance will be available at the conclusion of the program for both attendees and speakers. If you have questions about the number of credit hours granted by each state, you may call 312-988-6217, starting 2 to 3 weeks before the program.

CANCELLATION POLICY

The registration fee includes all scheduled coffee breaks, program luncheon, Friday cocktail reception and a bound manual of speakers' written presentations.

Requests for refund must be made in writing and received in the Section of Public Contract Law's office on or before October 29, 2004. **Refund requests received after October 19 will be reduced by a \$25 administrative fee.** Substitutions may be made at any time.

If you complete a registration form and fax it to the Section office, the transaction is considered a firm commitment, and you will be expected to pay the registration fee even if circumstances prevent you from attending the conference.

NO refunds will be made after October 29, 2004.

HOTEL INFORMATION

The Embassy Suites Hotel Napa Valley is located at 1075 California Boulevard in the heart of Napa Valley wine country on the corner of First Street and California Boulevard. The Mediterranean-style, three-story building is within minutes of Napa Valley's world-renowned wineries, restaurants, spas and specialty shopping and blocks from COPIA: the American Center for Wine, Food & the Arts, and the Napa Valley Opera House—both accessible via the Downtown Trolley.

The hotel is best accessed by rental car from any of three airports: San Francisco, Oakland, or Sacramento. The approximate driving distance from each airport is 60, 52, and 65 miles, respectively. Shuttle service to the Embassy Suites Napa Valley from San Francisco and Oakland International Airports is also available through Evans Transportation Service. The cost is \$45.00 each way. Schedules and reservations can be obtained by calling Evans directly at 707-255-1559.

A block of rooms has been reserved on a **priority basis for program speakers and registrants**. Room rates at the Embassy Suites Napa Valley are \$149, single/double, plus 12.07% tax per night for a spacious suite, offering a separate living room with sofa bed and a private bedroom. Each suite contains a galley kitchen which includes a wet bar with microwave, refrigerator and coffeemaker. All suites are equipped with two remote control color televisions and a two-line telephone with voice mail and Internet access. Guests enjoy a daily full cooked-to-order breakfast and nightly two-hour Manager's Reception. A limited number of rooms are available to federal government employees at the rate of \$125 and to state government employees at \$84, single or double, per night. Guests enjoy access to an indoor pool, outdoor pool, whirlpool and sauna as well as a complimentary pass to a local health and fitness center.

You may reserve your accommodations by calling the hotel directly at 707-253-9540 or toll free at 800-400-0353, referring to the **ABA Section of Public Contract Law 2004 Fall Meeting**, and guaranteeing your reservation by credit card or deposit check. Rooms will be available for check-in after 4:00 p.m. with a check-out time of 12:00 noon. Early arrivals or late departures will be booked on an availability basis. **Individuals with guaranteed reservations must cancel their reservations within 72 hours of the scheduled day of arrival to avoid a one-night cancellation charge.**

Make your reservations NOW. The hotel will release the room block on Tuesday, October 12, 2004 at 5:00 p.m. (CST).

SPECIAL AIRLINE DISCOUNTS

You are encouraged to make your airline reservations on the newly launched ABA Online Travel site where you automatically receive ABA airfare discounts from a variety of carriers and can view and purchase other low fare options including web fares. ABA Online Travel can be accessed from the navigation bar on the left of the ABA web site home page. It takes only a few moments to establish a username and password allowing you to immediately book your reservations. ABA Online Travel provides you with a quick and easy way for obtaining the most cost effective airline reservations. Visit <http://wcp.getthere.net/abaonlinetravel> or www.abanet.org.

Reservations can also be made with the ABA travel agent, Jennifer Słago, who also can automatically provide ABA airfare discounts. Jennifer can be contacted via email, jennifers@towertravel.com or by direct phone number at 312-988-5862.

ABA Discounted Meeting Airfares are available through your travel agent or directly from the airline. Following are the ABA discount codes under which your reservations need to be purchased in order to receive either the ABA percentage discount or zone fare.

- **American Airlines** **800-433-1790**
 ABA Code: 16666
- **Delta Air Lines** **800-241-6760**
 ABA Code: 189419A
- **US Airways** **877-874-7687**
 ABA Code: 36632473

COMING ATTRACTIONS

FEBRUARY 24-26, 2005

11th Annual Federal Procurement Institute and Open Midyear Council Meeting
LOEWS ANNAPOLIS HOTEL, ANNAPOLIS, MD

APRIL 28-30, 2005

Spring Educational Program and Open Council Meeting
GROVE PARK INN RESORT AND SPA, ASHEVILLE, NC

AUGUST 5-8, 2005

Annual Educational Programs and Open Council Meeting
INTERCONTINENTAL CHICAGO, CHICAGO, IL

NOVEMBER 10-12, 2005

Fall Educational Program and Open Council Meeting
HILTON SEDONA RESORT & SPA, SEDONA, AZ

REGISTRATION APPLICATION

Send directly to:

Marilyn M. Neforas, American Bar Association,
321 North Clark Street, M/S 19.1,
Chicago, Illinois 60610-4714
312-988-5596 — Fax: 312-988-6033

Please register the following person for the *Public Contract Law (PCL) Section* program on **Terminations Decanted** on Friday, November 5, 2004, at the Embassy Suites Hotel Napa Valley, in Napa, California.

1 Registration Fee:

- \$240 PCL Section Member or Associate
- \$195 Government Employee PCL Section Member
- \$215 Other Government Employee
- \$295 ABA Member, PCL Non-Member
- \$320 Non-ABA Member

2 Other Events

- \$35 Thursday, November 4, Wine Tasting, Registrant
- \$35 Thursday, November 4, Wine Tasting, Guest
- Free Friday, November 5, Cocktail Reception
- Free Saturday, November 6, Council Meeting

For reservations postmarked or faxed after October 29, 2004, and for walk-in registrants, add \$25 to each fee category.

3

Name _____
(please print legibly or type)

ABA Member No. _____

Firm/Agency/Company _____

Address _____

City, State, Zip _____

Telephone Number _____

Fax Number _____

Email _____

4

Enclosed is my check, made payable to the **American Bar Association/PCL**, for \$_____.

Government purchase/training order enclosed.

Charge \$_____ to my Credit Card:

Visa MasterCard AmEx

Card Number: _____

Exp. Date: _____

Signature: _____

5

Please note: Information provided on this registration form will be published in an attendee roster that will be distributed to meeting attendees.

Please do not list my name and contact information in the registration roster.

Please do not list my e-mail address in the registration roster.

Please send me information on becoming a member or associate of the: American Bar Association

Public Contract Law Section

I am an attorney

I am not an attorney