

The Fidelity Law Association 2017 Annual Conference

November 8, 2017
Sheraton Boston Hotel

39 Dalton Street
Boston, Massachusetts

A black sign with gold lettering and a seal, hanging from a metal pole. The sign reads "BOSTON COMMON" in large letters, with "ESTABLISHED 1634" below it. At the bottom, it says "CITY OF BOSTON DEPARTMENT OF PUBLIC WORKS" and "MAINTENANCE DIVISION".

**BOSTON
COMMON**
ESTABLISHED
1634

CONFERENCE INFORMATION

Fidelity Law Association | 2017 Annual Conference | Boston, Massachusetts

The Fidelity Law Association (FLA) is a nonprofit corporation dedicated to facilitating prompt and fair handling of fidelity claims. Although membership in the FLA is limited to persons employed in fidelity claims handling or underwriting by insurance companies or reinsurers, our Annual Conference is open to anyone with an interest in fidelity insurance.

This year, the Fidelity Law Association's Annual Conference will be held in Boston, Massachusetts, on Wednesday, November 8, 2017, at the Sheraton Boston Hotel.

Conference co-chairs, Scott Spearing, Shareholder in Hermes, Netburn, O'Connor & Spearing, P.C.; and Lynda Riesgo Jensen, Senior Claim Counsel, Management Liability First Party Claim for Travelers, have prepared an excellent program that will benefit all attendees, regardless of level of experience. A distinguished list of speakers will present on a variety of topics of interest to the fidelity community as outlined in the Program Information section of this brochure.

We are pleased to have Jeffrey L. Hartman as our keynote speaker. Jeff has been a leader in the corporate security, computer forensics and investigative community for over 25 years. As a founder of 4Discovery, Jeff consults with clients on complex litigation and Information Security issues and how they can increase the effectiveness of investigations through digital forensics. Jeff has managed hundreds of investigations and Trade Secret Breach engagements for Fortune 500 companies and attorneys and is a frequent speaker.

We will be applying for Continuing Education (CE) and Continuing Legal Education (CLE) credit in various states.

In keeping with our commitment to give back to the host city of the Conference, the FLA will be making a donation to the Greater Boston Food Bank (GBFB). The GBFB works to acquire, organize and distribute food through local food pantries, community meal programs, homeless and residential shelters, youth programs, and senior centers throughout eastern Massachusetts. Last year, GBFB distributed almost 41 million pounds of food, enough to provide healthy meals to as many as 545,000 people at risk of hunger.

All registrants will receive a copy of the Fidelity Law Journal, Volume XXIII, at the Conference and are invited to attend the joint FSLC/FLA Welcome Reception following the program.

SPECIAL NOTE FOR INSURANCE COMPANY EMPLOYEES:

The registration form on page 9 includes information on how you can enroll as a member in the FLA. Through your membership, you will have exclusive access to certain information, the ability to search Journal articles by keywords, and also download and print Journal articles. You will also have the opportunity to become involved in the operation of the FLA by serving on committees and voting for its officers. Other benefits are more fully described on the website at www.fidelitylaw.org. I encourage you to consider the benefits of becoming a member.

We look forward to seeing everyone in Boston!

Sincerely,

Robert Olausen
President
The Fidelity Law Association
ISO

PROGRAM INFORMATION

Fidelity Law Association | 2017 Annual Conference | Boston, Massachusetts

CO-CHAIRS

Scott S. Spearing, *Hermes, Netburn, O'Connor & Spearing, P.C.*

Lynda Riesgo Jensen, *Travelers*

SCHEDULE

7:30 a.m. – 9:00 a.m. **Registration and Continental Breakfast**

9:00 a.m. – 9:15 a.m. **Welcome**
Robert Olausen, President, *The Fidelity Law Association*

9:15 a.m. – 9:45 a.m. **Social Engineering Claims**
Social engineering fraud refers to all of the various schemes designed to manipulate people into performing actions (usually involving the transfer of money or property) or divulging confidential information (which allows a fraudster to transfer money or property). This presentation will discuss coverage issues relating to social engineering claims submitted under the Computer Fraud, Funds Transfer Fraud and social engineering fraud insuring agreements of the Commercial Crime Policy, including an examination of how emerging case law addresses these claims. The presenters will discuss how the “direct loss” requirement in each of these insuring agreements plays a part in determining coverage. The presenters will also discuss the impact of an employee’s failure to follow company policy with regard to technology and security and will also review limitations and exclusions to coverage. Finally, the presentation will examine recent developments in the insurance market, including new insuring agreements to address social engineering claims.
Michael Davisson and Patricia Michelena Parisi, *Cozen O'Connor*
Lawrence DeVos, *Zurich North America*

9:45 a.m. – 10:25 a.m. **Communications with Claimants and Witnesses: A Guide for Claims Professionals and Retained Counsel**
The claim investigation process usually requires claims professionals and the attorneys they retain to engage in communications with various people, including witnesses, the insured, and the insured’s former employees and representatives. This presentation will address some of the ethical issues that a claims professional and his or her retained counsel might face in communicating with these groups of individuals during the claim process and how to address such issues. The presenters will first review the most pertinent restrictions on the retained attorney’s communications with various individuals, and then will address what, if any, similar restrictions apply to the claims professional’s communications. The presentation will provide the claims professional and retained counsel with a framework of the ethical rules that pertain to their communications with individuals involved in the claims process and will identify ethical considerations that should be taken into account by the claims professional as he or she seeks to obtain the information necessary to resolve a claim.
John Felice, *Hermes, Netburn, O'Connor & Spearing, P.C.*
Mark Struthers, *CUNA Mutual Group*

10:25 a.m. – 10:35 a.m. MORNING BREAK

10:35 a.m. – 11:25 a.m.

Rescission — Inaccuracies, Fraud and Deception in the Application

This presentation will focus on issues relating to an insurer's decision to seek rescission of a bond when the insurer discovers intentional misrepresentations, inaccuracies or omissions in the insured's application for the bond. After an overview of the information relating to the language of the bond — which establishes the option of rescission — state statutes and case law defining elements of rescission and the burden of proof requirements will be identified. The presentation will then shift to a discussion among the panel members as to the effects the decision to rescind can have on the insurer and the insured.

Michael Weber, *Dinsmore & Shohl, LLP*

Steve Brault, *Business Risk Partners*

John Grise, *tKg Pro*

Robyn L. Sondak, *Travelers*

11:25 a.m. – 12:15 p.m.

Forensic Investigations — Finding the Hidden Gems

Computer Forensics is the art and science of applying both highly advanced forensics software and hardware and years of experience to the process of locating, preserving, authenticating and producing electronic evidence. Nearly every incident involving misconduct, diversion of intellectual assets, security breaches or internal corporate compliance violations contains digital evidence that, if uncovered, would prove invaluable in illuminating the event. Oftentimes, the digital tracks unknowingly created by wrong-doers can only be found in electronic form. Even the most sophisticated criminals leave behind digital fingerprints that can unravel their schemes when scrutinized by a talented computer forensics expert. Jeff Hartman, a leader in the corporate security, computer forensics and investigative community for over 25 years will discuss information security issues and how digital forensics are used in complex litigation cases and to increase the effectiveness of investigations.

Jeffrey L. Hartman, *Principal and Founder, 4Discovery*

12:15 p.m. – 1:55 p.m.

LUNCH BREAK (on your own)

1:55 p.m. – 2:05 p.m.

Introduction

Lynda Jensen and Scott Spearing

2:05 p.m. – 2:35 p.m.

Fidelity Law Update 2017

The presentation will offer a brief overview of the most important fidelity cases that were decided between June 15, 2016, and June 15, 2017. Among the cases to be discussed are several important opinions that offer insight into the meaning of "Computer Fraud" coverage. Other key topics that will also be covered include theft, rescission and the meaning of "direct."

Carla C. Crapster, *Strasburger & Price, LLP*

2:35 p.m. – 3:05 p.m.

Taking Depositions and Statements Under Oath in a Fidelity Bond Case

Examinations under oath and depositions can be valuable tools to the fidelity insurer and its counsel in handling claims and coverage lawsuits. It is important for the fidelity claims professional and counsel to understand the legal obligations of the insured and rights of the insurer with respect to examinations under oath and the impact of the insured's failure to fully cooperate. The deposition of the insured and other potential witnesses will often determine whether a coverage issue can be resolved through summary judgment and can assist the insurer in developing a thorough understanding of the insured's claims. This presentation will focus on examinations under oath and depositions, the rules and case law governing these information gathering tools, and strategies for both taking and utilizing examinations under oath and depositions to effectively evaluate coverage and properly address a fidelity insurer's obligations under its bonds and policies.

Jeff Price, *Manier & Herod*

Matthew Kalin, *Travelers*

3:05 p.m. – 3:35 p.m.

Knowledge of Prior Dishonesty – Does It Really Terminate Coverage?

A principal rule of fidelity coverage is that coverage for an employee's dishonesty terminates upon the insured employer's obtaining knowledge of that dishonesty. This principle has been under attack for many years by insureds seeking coverage for losses due to their employees' dishonesty and more recently by regulators and legislatures that are essentially requiring that employers hire persons despite their criminal records. The presentation will review the history of the automatic termination provision and the cases interpreting this provision. The presenters will also discuss the new "ban the box" regulations and other recent regulatory initiatives which seek to limit or eliminate the automatic termination provision, such as New York Insurance Regulation 209, and will discuss how insurers are addressing these issues.

Robert Briganti, *Belle Mead Claims Service, Inc.*

Dolores Parr, *Zurich North America*

3:35 p.m. – 3:50 p.m.

AFTERNOON BREAK

3:50 p.m. – 4:40 p.m.

The Future Ain't What It Used to Be: Challenges Facing Fidelity and Commercial Crime Insurers in the 2020s

This panel brings together experienced claims professionals, underwriters and claims counsel to address developing fidelity risks and exposures that will affect the industry in the years to come. Topics will include Social Engineering Fraud, Ransomware, Bitcoin and other Cryptocurrencies, "Ban the Box" regulations (including New York Regulation 209), and others.

Discussion Leader

Chris McKibbin, *Blaney McMurtry LLP*

Panelists

Robert Flowers, *Travelers*

Joshua Laycock, *Guarantee Company of North America*

Amy Malish, *Pugh Accardo LLC*

Brian O'Neill, *Berkshire Hathaway Specialty Insurance*

4:40 p.m. – 4:50 p.m.

Closing Remarks

Suggested dress for the conference is business casual.

FACULTY

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STEVE BRAULT is the Director of Broker Relations at Business Risk Partners, a managing general agency in Windsor, Connecticut. He received his BA in economics from the University of Vermont.

ROBERT BRIGANTI is currently President of Belle Mead Claims Service, Inc., in Hillsborough, New Jersey, a company he formed in 1992. He received his AB from Indiana University and his JD from the Western New England College School of Law, *cum laude*. Mr. Briganti is a past Vice-chair of the Fidelity & Surety Law Committee of the ABA and is currently an Advisor Emeritus of the FLA. He is admitted to practice in Massachusetts.

CARLA C. CRAPSTER is a Partner with the Dallas, Texas office of Strasburger & Price, LLP. She received her BA from Texas A&M University, *summa cum laude*, and her JD from the University of Texas School of Law, *with high honors*. Ms. Crapster is admitted to practice in Texas.

MICHAEL R. DAVISSON is a Member of the law firm of Cozen O'Connor in Los Angeles, California. He received his bachelor's degree from the University of California at Berkeley and his JD from the University of California, Hastings College of the Law.

LAWRENCE S. DeVOS is Claims Counsel with Zurich North America in Atlanta, Georgia. Mr. DeVos is a graduate of the University of Tampa, and he received his JD from the University of Tulsa College of Law.

JOHN FELICE is a Shareholder of Hermes, Netburn, O'Connor & Spearing, P.C., in Boston, Massachusetts. Mr. Felice received his BA from Fairfield University, *cum laude*, and his JD from Suffolk University School of Law, *cum laude*. He is admitted to practice in Massachusetts, Connecticut, New Hampshire and Rhode Island.

ROBERT FLOWERS is a 2nd Vice President, Management Liability First Party Claim for Travelers in Hartford, Connecticut. His team is responsible for a variety of First Party Management Liability products, including Commercial Crime, FI Bond, First Party Cyber, ID Fraud and Kidnap & Ransom claims. Mr. Flowers received his BA in international relations and affairs/business from the University of Nevada-Reno.

JOHN GRISE is a Partner with tKg Pro, a full-service wholesale brokerage firm in Southborough, Massachusetts. Mr. Grise runs the professional and management liability team with concentrations in the following areas: Technology, Privacy, Architects and Engineers, Management Liability, Miscellaneous E&O, Real Estate E&O, Allied Health and Financial Institutions.

JEFFREY L. HARTMAN is a Computer Forensics and eDiscovery Entrepreneur and a Co-Founder at 4Discovery, an elite digital forensics consulting firm with offices in Chicago, Illinois and New York, New York. 4Discovery provides data breach response forensics, litigation consulting and computer forensics solutions to corporate counsel, litigation attorneys and corporate security professionals. He received his BA and BS in criminal justice and political science from Western Illinois University.

LYNDA RIESGO JENSEN is a Senior Claim Counsel, Management Liability First Party Claim for Travelers in Braintree, Massachusetts. Ms. Jensen received her BA in economics from the University of California at San Diego and her JD from Suffolk University Law School, *with academic distinction*.

MATTHEW C. KALIN is a Claim Counsel, Management Liability First Party Claim for Travelers in Braintree, Massachusetts. Mr. Kalin received his BS from Boston College in finance and marketing and his JD from Suffolk University Law School.

JOSHUA LAYCOCK is the National Fidelity Product Manager, Guarantee Company of North America in Toronto, Canada, where he is responsible for the maintenance and development of underwriting standards, training, marketing, business development, distribution, product innovation and supporting strategies for Canada's second-largest Fidelity insurance portfolio. Mr. Laycock has a BComm from the University of Toronto and holds the Chartered Insurance Professional (CIP) and Registered Professional Liability Underwriter (RPLU) designations.

AMY MALISH is a Special Partner at Pugh Accardo LLC in New Orleans, Louisiana. Her practice focuses on litigating commercial disputes, including defending life, health and disability and ERISA claims, fidelity and commercial crime claims, securities litigation, and employment claims. Ms. Malish received her BA, *high honors*, Phi Beta Kappa, from the University of Texas and her JD, *magna cum laude*, from Loyola University College of Law. She is admitted to practice in Louisiana.

CHRIS MCKIBBIN is a Partner in the Fidelity Practice Group of Blaney McMurtry LLP in Toronto, Canada, practicing primarily in fidelity coverage litigation and fraud recovery. In addition to editing Blaney's Fidelity Blog, he is a frequent speaker and writer on fidelity and fraud issues. Mr. McKibbin is a graduate of the University of Toronto (LLB) and the University of Manitoba (BA, Gold Medal).

ROBERT OLAUSEN is a Principal at ISO. He received his BBA from Upsala College and did his post-graduate work at St. John's University College of Insurance. Mr. Olausen is the current President of the FLA and a member of PLUS.

BRIAN O'NEILL is the Head of Fidelity and Crime for Berkshire Hathaway Specialty Insurance (BHSI) in New York, New York. Prior to BHSI, he was an Executive Vice President and Senior Fidelity Officer for American International Group, responsible for its fidelity and crime book of business. Mr. O'Neil is a graduate of Iona College with a BBA in finance.

PATRICIA MICHELENA PARISI is Of Counsel at the law firm of Cozen O'Connor in Los Angeles, California. Ms. Parisi received her bachelor's degree from the University of California in Los Angeles and her JD from Loyola Law School.

DOLORES A. PARR is the Managing Counsel in the Fidelity and Crime Claim Unit of Zurich North America in Baltimore, Maryland. She received her BA from Towson University, *magna cum laude*, her JD from the University of Baltimore Law School and her MLA from Johns Hopkins University. She also holds an Associate in Fidelity and Surety Bonding designation. Ms. Parr is the current vice president of the FLA and is admitted to practice in Maryland.

JEFF PRICE is a Principal and managing partner with Manier & Herod in Nashville, Tennessee, practicing in the areas of fidelity law and surety law. Mr. Price received his BA, *magna cum laude*, from Gardner Webb University in Boiling Springs, North Carolina. Mr. Price received his JD, *summa cum laude* and Order of the Coif, from the University of Tennessee College of Law, where he was a member of the Tennessee Law Review.

ROBYN L. SONDAK is Senior Counsel with Travelers in Hartford, Connecticut. She received her JD from the University of Connecticut School of Law. Ms. Sondak is an adjunct professor at the University of Connecticut School of Law, where she teaches a class on pretrial litigation.

SCOTT S. SPEARING is a Shareholder and founding member of Hermes, Netburn, O'Connor & Spearing, P.C. in Boston, Massachusetts. He received his BS from the United States Naval Academy and his JD from Northeastern University School of Law. Mr. Spearing is admitted to practice in Massachusetts.

MARK J. STRUTHERS is a Fidelity Bond Claims Consultant with CUNA Mutual Group in Madison, Wisconsin. He received his BA from the University of Wisconsin – Eau Claire and his JD from the University of Wisconsin. Mr. Struthers is admitted to practice in Wisconsin and is a member of the FLA Executive Committee.

MICHAEL WEBER is a Partner in the Litigation Department at Dinsmore & Shohl, LLP, in Chicago, Illinois. He received his BS in finance from Indiana University and his JD from Indiana University's Maurer School of Law. Mr. Weber is admitted to practice in Illinois and Michigan.

ADDITIONAL INFORMATION

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HOTEL

Hotel reservations can be made with the Sheraton Boston Hotel by calling the hotel at (800) 325-3535 or (617) 236-2000 and mentioning the **“ABA Tort Trial & Insurance Practice Section FSLC & FLA Fall Meeting.”** The Block Code for the conference is ABA Tort Trial & Insurance Practice Section FSLC & FLA Fall Meeting.

A limited number of rooms have been blocked for Tuesday, November 7, through Friday, November 10. The negotiated hotel room rate is \$275 per night plus 14.45% tax. The room block will be held until exhausted or until Tuesday, October 17, 2017, at 5:00 p.m. (Eastern Standard Time). After October 17, reservations will be confirmed based on availability.

Hotel check-in is 3:00 p.m. and checkout is 12:00 p.m. All reservations must be guaranteed by credit card. Individuals with guaranteed reservations must cancel their reservations no later than 24 hours before the scheduled day of arrival to avoid a one-night cancellation charge.

PERSONS WITH DISABILITIES

If you require special arrangements, please call the Sheraton Boston Hotel at (617) 236-2000. Reasonable advance notice is requested.

SCHOLARSHIPS

Scholarships are available for those who would otherwise be unable to attend the Conference. The application for financial assistance can be found on the FLA website at www.fidelitylaw.org.

CE AND CLE CREDIT

FLA will directly apply for Continuing Education Credit (CE) and Continuing Legal Education Credit (CLE) in the following states:

- Continuing Education Credit (CE): AR, CA, CT, DE, FL, GA, IN, KY, LA, MN, MS, NH, NC, OK, OR, TX and WV
- Continuing Legal Education Credit (CLE): All states except AK and HI

Information regarding CE and CLE credit, including a Certificate of Attendance form, will be available at the Conference registration desk. If you have any questions concerning CE or CLE, please email us through our website: www.fidelitylaw.org.

ABA/FSLC FALL PROGRAM

The American Bar Association Tort Trial & Insurance Practice Section, Fidelity and Surety Law Committee will conduct its Fall Program at the Sheraton Boston Hotel on November 9 and 10, 2017. For information regarding the ABA FSLC's Fall Program, please contact Donald Quarles at donald.quarles@americanbar.org regarding FSLC registration questions.

On Wednesday, November 8, 2017, there will be a joint FSLC/FLA Welcome Reception following the program. All registrants for the FLA Conference are invited to attend.

CANCELLATION POLICY

A registration fee refund may be requested if made by October 18, 2017. Registrants who notify the FLA after October 18, 2017, that they are unable to attend may send a substitute or receive course materials in lieu of a refund. Registrations made after October 18, 2017, are not refundable.

REGISTRATION INFORMATION

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REGISTER ONLINE

Register online at www.fidelitylaw.org.

REGISTER BY MAIL

If registering by mail, please complete the following and send it with your registration fee (check drawn in U.S. funds) made payable to the Fidelity Law Association, P.O. Box 33, Cranbury, NJ 08512.

Last Name First Name MI

Name (as you want it to appear on your name badge)

Company/Firm

Title Department

Address 1

Address 2

City/State/Zip Country

Telephone Cell Phone

Email

Check here if: This is your first year attending an FLA meeting
 You would like to be placed on the FLA mailing list

COMPANY EMPLOYEES ONLY: I wish to become a Fidelity Law Association Member

- By attending this Conference you understand the annual Membership fee of \$25 is waived.
- A listing of membership benefits can be found in the Membership Section of the FLA's website: www.fidelitylaw.org.
- Your FLA Membership runs the calendar year January 1 to December 31.
- Your password to the FLA Membership Section will be sent to the above email address once your membership application has been approved.

Your registration must be received by **October 16, 2017**, to ensure that your name is included on the registration list. On-site registrations with payment will be accepted, space permitting.

REGISTRATION FEES

Includes attendance at the November 8, 2017, Annual Conference, a copy of The Fidelity Law Journal and attendance at the joint reception with attendees of the ABA FSLC meeting.

The registration fees for the Conference are:

- Insurance Company Employees: \$175 (received by October 16, 2017)
\$200 (received after October 16, 2017)
- Non-Insurance Company Employees: \$300 (received by October 16, 2017)
\$325 (received after October 16, 2017)

An additional fee of \$25 will apply to registrations made the day of the conference.