

HOW TO HANDLE THE FIDELITY BOND CLAIM

November 6-8, 2019 | Hilton Boston Back Bay | Boston, MA

Sponsored by
ABA Tort Trial & Insurance Practice Section, Fidelity &
Surety Law Committee

of Fall 19
Meeting

ABA

AMERICAN BAR ASSOCIATION

Tort Trial and Insurance
Practice Section

GREETINGS

Dear FSLC Members,

It's hard to imagine a more perfect place to spend a fall day than in the wicked good city of Boston, MA where we will be for the 2019 ABA Tort Trial and Insurance Practice Section (TIPS) Fidelity and Surety Law Committee's Fall Fidelity Program. Come join us at the Hilton Boston Back Bay as we unveil the 2nd Edition of Handling Fidelity Bond Claims, a book we know everyone who has a fidelity claim cross their desk will want within easy reach. The program entitled "How to Handle the Fidelity Bond Claim" will present an opportunity to hear from some of the greatest minds in the industry as they discuss their methodologies and experiences handling fidelity claims, both simple and complex. It gets even better on Friday morning when our esteemed faculty will work with attendees to navigate four scenarios encountered in the handling of the fidelity claim.

We are pleased once again to be meeting the day after and in the same location as the Fidelity Law Association's annual meeting. The FLA consistently presents a very substantive and thought-provoking program. I encourage you to register for and attend the FLA program as well as the FSLC program.

The FSLC will host a reception on Thursday evening following the program. Please make plans to drop by to catch up with friends and colleagues. Dinner is on your own, so gather some friends at the reception and take advantage of one of the many amazing restaurants in Boston!

Whether you are an experienced claims handler or new to the wonderful world of fidelity claims, you will leave this program having learned how to better handle a fidelity claim. Along the way, you'll have some fun and meet some great people.

I encourage you to register for the conference and make your hotel reservations as soon as possible. Our hotel block often fills up and I would not want you to miss out on our beautiful host hotel. I look forward to seeing you all in Boston!

Darrell S. Leonard

Chair, ABA TIPS Fidelity and Surety Law Committee
Zurich American Insurance Company

The ABA will seek 8 hours of CLE credit in 60-minute states, and 9.6 hours of CLE credit for this program in 60-minute states.



AGENDA

THURSDAY, NOVEMBER 7, 2019

7:30 AM – 8:30 AM

BREAKFAST

8:30 AM – 8:40 AM

WELCOME AND INTRODUCTION

Megan Manogue, *Berkley Finsecure*, Towson, MD
Richard Baudouin, *Krebs Farley & Dry*, New Orleans, LA

8:40 AM – 9:10 AM

THE EVOLUTION OF FIDELITY COVERAGE—110 YEARS OF CHANGE

From its origin as a type of three-party surety product to the current two-party insurance product in use today, Fidelity Coverage has continued to evolve in response to competitive pressures, erroneous court decisions, and changes in risk factors. Robert Olausen and William Heinbokel will trace the evolution of the fidelity insurance product from its origin as the Standard Form 1 up to and through the modern policies in use today.

Robert Olausen, *ISO*, New York, NY
William Heinbokel, *The Surety & Fidelity Association of America*, Washington, DC

9:10 AM – 10:00 AM

CLAIM HANDLER'S INITIAL ANALYSIS OF THE CLAIM

Fidelity claims can present a myriad of issues over the course of their existence. While each claim is unique, recognizing various issues that commonly arise at the beginning of the claim process can assist the claim handler early and throughout the claim. This presentation focuses on those tasks and issues and how the claim handler can address them and move the claim toward resolution.

Joel Wiegert, *Meagher & Geer, PLLP*, Minneapolis, MN
Dominique Sena-DiDonato, *Chubb Group of Insurance Companies*, Basking Ridge, NJ

10:00 AM – 10:20 AM

MORNING BREAK

10:20 AM – 11:10 AM

PURSUING THE INSURED'S CLAIM

With over 60 years of combined experience guiding insureds through the claim process, John Eichman and Doug Worth will address best practices for an organization victimized by a fidelity loss—from discovering the loss, to investigating and documenting it, to dealing with the insurer and parallel criminal proceedings, to resolving the claim.

John Eichman, *Hunton Andrews Kurth LLP*, Dallas, TX
Douglas Worth, *Willis Towers Watson*, White Plains, NY

11:10 AM – 12:00 PM

RESCISSION

The insurer's right to rescind a policy that was induced by way of a material misrepresentation or omission, if successful, provides the insurer with a complete, clean defense to a claim. Rescission, when used strictly in the appropriate circumstances, is an important tool for addressing risks that, had the insurer known the truth, it would not have accepted. But successfully rescinding a policy may require that the insurer clear various procedural hurdles; for example, some jurisdictions require that the insurer prove an intent to deceive. This presentation will discuss factors to consider when contemplating rescission, the various challenges that are likely to arise in the course of rescinding a fidelity policy, and various approaches to meeting them.

Adam Friedman, *Chiesa Shahinian & Giantomasi PC*, West Orange, NJ
Daniel White, *Chiesa Shahinian & Giantomasi PC*, West Orange, NJ
Frances Rivera, *Axis Insurance Company*, Berkley Heights, NJ



12:00 PM – 1:30 PM

LUNCH

1:30 PM – 2:20 PM

USE OF OUTSIDE PROFESSIONALS

The investigation of a fidelity bond claim can be a complex undertaking and often lends itself to the need for the expertise of an outside professional. The decision to retain an outside consultant—be it outside counsel, an accountant or other professional—belongs to the claim professional. The presentation will provide the claim professional with a roadmap that can assist in selecting, retaining, working effectively with and managing the appropriate outside professional to enhance the claim review process and to assist in the resolution of the claim. The speakers also will provide an overview of the attorney-client privilege and the work product doctrine and how these protections are used to ensure a successful engagement with the outside professional. The panel's discussion will focus on current issues involving the use of outside consultants and provide some ideas and strategies on how to effectively employ the skills of an outside claim professional.

Matthew C. Kalin, *Travelers Casualty and Surety Company of America*, Braintree, MA

DM (Dee) Studler, *SDC CPAs, LLC*, Aurora, IL

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

Kara A. Loridas, *Hermes, Netburn, O'Connor & Spearing, P.C.*, Boston, MA

2:20 PM – 2:50 PM

RETLIATORY LITIGATION CONCERNS

When investigating a claim under a fidelity bond, the fidelity insurer receives and often needs to disclose information regarding criminal or unsavory conduct to third parties. Although rare, these necessary disclosures and other investigatory steps can lead to claims, and even lawsuits, by the alleged dishonest employee, the insured or its other employees asserting damage to personal or business reputation. When a fidelity claims investigation is conducted properly and ethically, a fidelity insurer should not be at risk of a successful retaliation claim by an accused employee or an unhappy insured. However, in a claim environment that can often include individuals under tremendous amounts of pressure, whether from law enforcement or from angry internal stakeholders who have been swindled, an insurer can never be too prepared to face possible claims that may be asserted. This presentation will review various types of retaliatory claims, from defamation to invasion of privacy, that may arise from typical activities during the various stages of a fidelity claim investigation and suggest strategies for preventing and responding to such claims.

CharCretia DiBartolo, *Watt, Tieder, Hoffar & Fitzgerald, L.L.P.*, Boston, MA

Joe Quinn, *Hiscox Insurance*, Chicago, IL

2:50 PM – 3:10 PM

AFTERNOON BREAK

3:10 PM – 4:00 PM

INSURER'S ANALYSIS AND RESPONSE TO THE PROOF OF LOSS

When an insured first discovers what appears to be a potentially covered loss under its fidelity bond or crime policy, certain conditions and limitations of the bond or policy are triggered. The insured must provide notice of its claim to the insurer within a certain amount of time, and then submit a proof of that loss within a specified time. The insured's Proof of Loss usually is the most important document in the claim process. The insurer's investigation and analysis are largely based upon the contents of the Proof of Loss and a claim is paid, denied or compromised based largely upon the proof of loss and the insurer's ensuing investigation. This presentation will discuss the insurer's analysis of the sufficiency of the proof of loss as well as other aspects of proof of loss procedure, such as: (1) the requirements for filing the proof of loss;



(2) the actions an insurer should take upon receipt of the proof of loss; (3) when and how an insurer should grant extensions of time for filing the proof of loss; and (4) how an insurer should handle supplemental and amended proofs of loss.

Dolores Parr, *Zurich American Insurance Company*, Baltimore, MD
Rebecca Farina, *Zurich American Insurance Company*, Dallas, TX

4:00 PM – 4:30 PM

VALUING THE INSURED'S LOSS / LIMIT OF LIABILITY

Determining the monetary amount, if any, of a fidelity insurer's potential liability is an important aspect of handling and responding to a covered claim. Fidelity policies cover the insured for the "loss" of defined categories of property, owned or held by the insured, directly resulting from defined covered causes of loss (e.g., theft). When the insured has sustained a covered loss, the amount of compensation, if any, to be paid to the insured will depend upon applying the specific policy's provisions to the facts of the claim. This presentation will address common policy provisions that impact upon the calculation of the dollar amount of an insurer's potential liability for fidelity claims, including provisions that: (1) set forth specifically how different categories of covered property (e.g., "Money" or "Securities") are to be valued; (2) apply a deductible and a limit of liability for a single loss or occurrence; (3) prevent or restrict multiple recoveries for losses sustained during consecutive policy periods; (4) limit coverage to loss incurred during specified time periods (i.e., "loss sustained" policies); and (5) restrict or limit coverage for loss covered by other insurance.

Armen Shahinian, *Chiesa Shahinian & Giantomasi PC*, West Orange, NJ
Andrew Kent, *Chiesa Shahinian & Giantomasi PC*, West Orange, NJ
Hilary Hoffman, *Chubb Group of Insurance Companies*,
Basking Ridge, NJ

4:30 PM – 5:00 PM

SETTLEMENT, SUBROGATION AND MITIGATION

Good fidelity practitioners ensure that subrogation and recovery efforts are not an afterthought but are given prompt consideration at the outset of a claim. Failing to take advantage of subrogation rights means missed opportunities in potential recovery and in reducing the insurer's net loss. This presentation will provide an overview of critical principles of subrogation and recovery and provide tips on how to effectively exploit subrogation opportunities, including investigation and preparation of files for successful subrogation claims, recognizing and pursuing subrogation targets, intersections of state law and fidelity bond language regarding subrogation and allocation of recoveries, and effectively crafting settlement agreements so as to avoid future disputes over recovery dollars.

Amy Malish, *Pugh, Accardo, Haas, Radecker & Carey LLC*,
New Orleans, LA
Kurt Schultheis, *Berkley FinSecure*, Towson, MD

5:00 PM – 6:30 PM

RECEPTION

FRIDAY, NOVEMBER 8, 2019

8:00 AM – 9:00 AM

BREAKFAST

9:00 AM – 11:45 AM

BREAK OUT SESSIONS

For the final day of the program, the conference attendees will have an opportunity to apply Thursday's discussion to hypothetical claims handling scenarios. On Friday morning, the attendees will break out into four conference rooms. Circulating among the rooms will be four panels, each focused on a different insuring agreement. Attendees will receive a hypothetical loss scenario, which will serve as the starting point to engage the room in a lively discussion of claims handling issues.



Additionally, each discussion will include a sub-issue allowing the groups to focus the discussion on a particular coverage concept. The panels will each spend at least 30 minutes in each room, with time in between to allow for transition.

9:00 AM – 9:30 AM

BREAK-OUT SESSION

Panel A: Handling the Employee Dishonesty and Theft Claim. Sub-issue: Is the Fraudster an Employee or Alter Ego?

This panel will lead a discussion of handling claims involving the employee dishonesty insuring agreement. Particular attention will be paid to circumstances suggesting the accused fraudster is the alter ego of the insured rather than an employee.

Mike Keeley, *Clark Hill Strasburger*, Dallas, TX

Kevin Mekler, *Travelers Casualty and Surety Company of America*, Tampa, FL

Andrea Gennetti, *Travelers Casualty and Surety Company of America*, Blue Bell, PA

Samuel Arena, *Stradley Ronon Stevens & Young, LLP*, Philadelphia, PA

9:40 AM – 10:10 AM

BREAK-OUT SESSION

Panel B: Handling the Computer Crime Claim. Sub-issue: Causation and Third-Party Losses.

This panel will lead a discussion of handling claims involving computer crime. In addition to the investigating the characteristics of the breach, the discussion will focus on the direct loss requirement's impact on the claim analysis.

Jeff Price, *Manier & Herod, P.C.*, Nashville, TN

Justin Wear, *Manier & Herod, P.C.*, Nashville, TN

Stephani Miller, *Liberty Mutual*, Seattle, WA

Scott Schmookler, *Gordon + Rees LLP*, Chicago, IL

10:10 AM – 10:25 AM

BREAK

10:25 AM – 10:55 AM

BREAK-OUT SESSION

Panel C: Handling the Securities Claim. Sub-issue: Discovery of Loss.

This panel will lead a discussion of handling claims involving forged and altered documents as listed in Insuring Agreement (E) of the Financial Institution Bond. The discussion will also feature consideration of when discovery of the loss occurs.

Chris McKibbin, *Blaney McMurtry*, Toronto, Ontario

Katherine Musbach, *Gordon + Rees LLP*, Chicago, IL

Mark Krone, *Travelers Casualty and Surety Company of America*, Los Angeles, CA

Toni Scott Reed, *Clark Hill Strasburger*, Dallas, TX

Tracey Archbold, *Great American Insurance Company*, Farmingdale, NJ

11:05 AM – 11:45 AM

BREAK-OUT SESSION

Panel D: Handling the Forgery Claim. Sub-Issue: Termination and Cancellation of Coverage.

This panel will lead a discussion of handling claims involving forged or altered instruments, such as checks and certificates of deposit. Particular attention will be paid to the unique problems implicated by termination and cancellation provisions of the policy.

Gary Valeriano, *Anderson, McPharlin & Connors LLP*, Los Angeles, CA

Carleton Burch, *Anderson, McPharlin & Connors LLP*, Los Angeles, CA

Michael Weber, *Dinsmore*, Chicago, IL

Patricia Ricciuti, *The Hartford*, Hartford, CT

11:45 AM – 12:00 PM

CLOSING REMARKS

REGISTRATION FORM

ABA TORT TRIAL & INSURANCE PRACTICE SECTION (TIPS) 2019 FIDELITY & SURETY LAW FALL CONFERENCE

REGISTRATION DEADLINE: OCTOBER 25, 2019

1. REGISTRANT: *(Please print or type one form per person; photocopy this form for additional registrants)*

LAST NAME FIRST NAME MI

NAME AS YOU WISH IT TO APPEAR ON YOUR BADGE

FIRM/COMPANY WHAT STATE(S) ARE YOU LICENSED IN?

ADDRESS

CITY STATE ZIP

(AREA CODE) BUSINESS TELEPHONE FACSIMILE

E-MAIL ADDRESS

- Are you attending your first FSLC Program? Yes No ____ 3 or less
- I am a member of the ABA and wish to join the Tort Trial & Insurance Practice Section and I have enclosed a separate check for \$50 made payable to the American Bar Association.

2. REGISTRATION FEES:	On or Before	After	QTY	Total
	10/25/19	10/25/19		
TIPS Member	\$550	\$575	_____	_____
ABA Member	\$595	\$620	_____	_____
General Attendee	\$795	\$820	_____	_____
Insurance/In-House/Solo/TIPS Members	\$175	\$175	_____	_____
Insurance/In-House/Solo/Non TIPS Members	\$250	\$250	_____	_____
ABA Member Law Student	\$50	\$50	_____	_____

3. TOTAL PAYMENT TOTAL _____

4. PAYMENT INFORMATION

- Check (made payable to the ABA) American Express MasterCard VISA

CREDIT CARD NUMBER EXPIRATION DATE

SIGNATURE

THREE WAYS TO REGISTER

1. ONLINE:
ambar.org/tips

2. MAIL:
American Bar Association
Tort Trial & Insurance Practice Section
2019 FIDELITY & SURETY LAW FALL CONFERENCE
Attn: Service Center/Meeting Event Code: IL1911FFM
321 North Clark Street, Floor 19
Chicago, IL 60654

3. SECURE FAX
(312) 988-5850

On-site registrants must pay the program fee plus an additional \$25 by check or credit card.

GENERAL INFORMATION

Registration Deadline: October 25, 2019

Hotel Deadline: October 15, 2019

ADVANCE REGISTRATION

Visit the TIPS website to register at ambar.org/tips or complete the registration form included in this brochure for the 2019 TIPS Fidelity & Surety Law Fall Conference "Handling Fidelity Bond Claims" located at the Hilton Boston Back Bay, Boston, MA.

The registration fee includes admission to the program, course materials, continental breakfast, breaks, and reception. If you wish to have your name appear on the pre-registration list distributed at the program, all registration forms must be received no later than the registration deadline of October 25, 2019. Registration reservations will be confirmed in writing within 10 business days.

ON-SITE REGISTRATION

On-site registrations will be accepted. Call Danielle Daly at 312/988-5708 or email danielle.daly@americanbar.org 36 hours prior to the program to confirm that space is available. On-site registrants must pay the program fee by credit card or check made payable to the American Bar Association. A \$25 fee will be charged to individuals registering on-site.

CANCELLATION POLICY

No registration fee refunds will be granted for cancellations received after **October 25, 2019**. In order to receive a refund (less a \$50 administrative fee), the ABA must receive written cancellation by **October 25, 2019**. Registrants who are unable to attend may send a substitute or will receive course materials in lieu of a refund.

HOTEL INFORMATION

For Reservations call: **617-236-1100**

A limited number of rooms have been blocked for program registrants of the 2019 TIPS Fidelity & Surety Law Conference at the Hilton Boston Back Bay, 40 Dalton St, Boston, MA 02115 for a hotel room rate of \$289.00 single/double plus 14.4% tax. For reservations, please call the hotel directly at **617-236-1100**. The room block will be held until exhausted or until **Tuesday, October 15, 2019 at 5:00 p.m. (CST)**. After the meeting specified hotel deadline, reservations will be confirmed based on availability. Please refer to the ABA Tort, Trial & Insurance Practice Section FSLC Fall Conference, when calling the hotel to make reservations. Hotel check-in is 3:00 p.m. and checkout is 11:00 a.m. All reservations must be guaranteed by credit card or deposit check for one night's room and tax. Individuals with guaranteed reservations must cancel their reservations 48 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.

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Click here **or** Discount available at www.delta.com
Click **Advance Search** and enter Online Meeting Event Code: **NM59P** in the **Meeting Event Code**

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CLE CREDIT

The ABA will seek 8 hours of CLE credit in 60-minute states, and 9.6 hours of CLE credit for this program in 50-minute states. Credit hours are estimated and are subject to each state's approval and credit rounding rules. Please visit the program website at ambar.org/tips for program CLE details or visit americanbar.org/mcle for general information on CLE at the ABA.

MEMBERSHIP INFORMATION

For more information about membership in the ABA or the Tort Trial & Insurance Practice Section (TIPS), please visit us online at ambar.org/tipsmembership or call 800/285-2221. Membership in TIPS includes three industry-leading periodicals, discounts of up to 20% on many TIPS CLE programs, and other career and practice-enhancing benefits. Join TIPS today!

PERSONS WITH DISABILITIES

Services for persons with disabilities are available. If special arrangements are required for an individual to attend this program, please notify Danielle Daly at either 312/988-5708 or at danielle.daly@americanbar.org promptly. Reasonable notice is requested.

GET CONNECTED WITH TIPS

Information on this and other TIPS CLE programs is available online at ambar.org/tips. Visit us and get connected!

SCHOLARSHIPS AVAILABLE

Scholarships are available for all Section activities, courtesy of the TIPS Scholarship Fund. The Fund, established with the International Risk Management Institute ("IRMI") and supported by subscriptions to the IRMI CGL Reporter, is intended to increase membership involvement in TIPS' activities by minorities, solo and small firm practitioners, government attorneys, women, and young lawyers by providing financial support to those who would otherwise be unable to participate. For programs with tuition cost over \$500, qualifying attorneys will receive at least a 50% reduction in the course fee(s). To request an application or receive additional information, visit ambar.org/tips/scholarship or contact Jennifer Michel at Jennifer.Michel@americanbar.org 312/988-5463 for more information and an application.

SAVE THE DATES!

Mid-Winter Conference January 29 – 31, 2020



Fidelity & Surety Law Mid-Winter Conference Grand Hyatt New York, NY

The 2020 FSLC Midwinter conference is sure to have something for everyone! The Fidelity program will feature a day and a half of programming exploring how the fidelity world has adapted to new technologies and cyber threats. Continuing our commitment to provide quality programming on construction related topics, the Thursday construction program will focus on the traits of a healthy contractor. In addition, the Thursday program will conclude with an ethics presentation on implicit bias and how it affects both our industry and our everyday lives.

Our Friday surety program is an innovative program exploring various approaches in diagnosing, and hopefully curing the ailing contractor. The speakers will include many of the FSLC's most distinguished claims professionals, attorneys and consultants, together with several guest speakers who bring a unique and outside perspective. This promises to be an enlightening and unique program that should not be missed!

Fidelity & Surety Law Spring Conference May 7-8, 2020 Hyatt Regency Lake Tahoe Incline Village, NV

HOW TO HANDLE THE FIDELITY BOND CLAIM

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Boston, MA

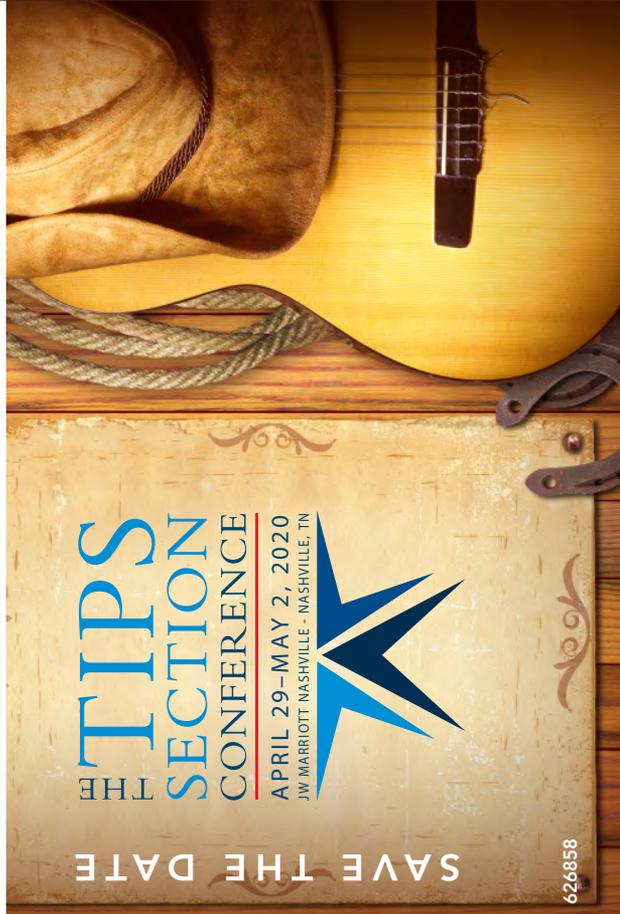
Sponsored by
ABA Tort Trial & Insurance Practice Fidelity & Surety Law Committee

ambar.org/tipsmeetings

SAVE THE DATE

THE TIPS SECTION CONFERENCE

APRIL 29-MAY 2, 2020
JW MARRIOTT NASHVILLE - NASHVILLE, TN



Tort Trial and Insurance
Practice Section

AMERICAN BAR ASSOCIATION

Tort Trial & Insurance Practice Section
321 North Clark Street
Chicago, Illinois 60654