MANAGING AND LITIGATING THE COMPLEX FIDELITY CLAIM

November 8–10, 2017
Sheraton Boston Hotel
Boston, MA

FSLC Fall 17 Meeting

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

CLE This conference is expected to qualify for 9.00 CLE credit hours (including .50 ethics hours) in 60-minute states and 10.80 credit hours (including 1.00 ethics hour) in 50-minute states

ABA

TORT TRIAL & INSURANCE PRACTICE

GREETINGS

Dear FSLC Members,

It is my pleasure to invite you back to Boston, a city steeped in history and tradition (the FSLC included), for the 2017 ABA Tort Trial & Insurance Practice Section (TIPS) Fidelity & Surety Law Committee (FSLC) Fall CLE program. I hope you will be with us at the Sheraton Boston for an extremely pragmatic and practice-based program that will have something for everyone. This program is designed to function like a great workshop, with practical information, tips and discussions that will benefit the youngest to the most experienced in our industry. Please bring your colleagues along, even if they don't usually attend these programs in person. This is a program that is not to be missed.

The 2017 FSLC Fall Meeting, "Managing and Litigating the Complex Fidelity Claim," will include many of the FSLC's most distinguished speakers—from companies, law firms, and consulting firms, who will address the most important substantive and practical areas that are prevalent in fidelity and commercial crime claims today. The program chairs have designed a lineup of presentations that will be a real professional tool to support your work and practice. The program focus will be a pragmatic discussion of and plan for implementation of specific skills, with an eye toward pressing legal issues, ethical issues, and strategy.

Do you find yourself discussing with your colleagues how different claims handling has become in recent years? Do you want to know more about how others in our industry are addressing challenges, technology changes, communication changes, and the business environment overall? We think that our wide-ranging discussion of topics that run through most, if not all, fidelity and commercial crime claims will be helpful to all practitioners and professionals, regardless of the role they play for any particular claim.

We are pleased once again to be joining the FSLC Fall Meeting with the Fidelity Law Association's annual meeting, which will occur at the Sheraton on Wednesday, November 8. The FLA always does a great job putting on a very substantive program, and I encourage you to register for and attend the FLA meeting as well as the FSLC meeting. A joint cocktail party is planned for Wednesday evening at the hotel, and all attendees for the FLA and the FSLC are invited to gather, meet and socialize.

Following our Thursday sessions of the FSLC meeting, there will be a Boston-themed cocktail party for all FSLC meeting attendees. There may be a signature cocktail or two, so please plan to stop by. While many of you will want to step away from the hotel for a dinner out, those who want to stay close-by will enjoy a light dinner buffet, served toward the conclusion of the cocktail party. Gather together with friends (from around the country) to enjoy that opportunity if you prefer not to go out.

Attire for the Fall Meeting is flexible: pack your business attire or business casual, whatever makes you most comfortable.

Please register for the conference as soon as possible, and make your hotel reservation quickly too. Our room block may fill up fast, and we want you to enjoy the amenities on site.

Toni Scott Reed
Strasburger & Price, LLP
Chair, ABA TIPS Fidelity and Surety Law Committee

AGENDA

THURSDAY PROGRAM

7:30 AM – 9:00 AM **CONTINENTAL BREAKFAST**

7:30 AM – 5:00 PM **REGISTRATION**

8:00 AM – 8:15 AM **WELCOMING REMARKS AND PROGRAM INTRODUCTION**

Toni Scott Reed, *Chair, Fidelity & Surety Law Committee, Strasburger & Price, LLP, Dallas, TX*
Holly M. Polglase, *Chair, Tort Trial & Insurance Practice Section, Hermes, Netburn, O'Connor & Spearing PC,* Boston, MA

PROGRAM CHAIRS: **Judith Blake,** *AIG,* New York, NY
Patricia Wager, *Torre, Lentz, Gamell, Gary & Rittmaster, LLP,* Jericho, NY

MORNING TOPICS

8:15 AM – 9:00 AM **BUILDING THE CLAIMS FILE**

Building a claims file is the first and most basic step that a claims team must take when a fidelity claim is received. But that doesn't mean we can take the process for granted. Instead of offering a prescription for the "proper" way to handle a claim (which is fraught with peril), this presentation will point out case law that originates out of disputes over what seem like routine aspects of building a claims file. The panel will explain and discuss how the dispute arose and how such conflict might be handled or avoided in future case management.

SPEAKERS: **Matt Farley,** *Krebs I Farley PLLC,* New Orleans, LA
Richard Baudouin, *Krebs I Farley PLLC,* New Orleans, LA
Dolores Parr, *Zurich Insurance Company,* Catonsville, MD

9:00 AM – 9:40 AM **DISCOVERABILITY OF INSURANCE COMPANY DOCUMENTS**

From the moment a claim is filed the claims team must be considering the potential for litigation and be aware of the potential discoverability of every communication. This panel will discuss the use of the work product privilege and attorney-client privilege as it relates to the insurer's claim investigation, what documents are prepared for the purpose of litigation or in the ordinary course of business, such that privilege might apply. This presentation will address discovery, both during the claim investigation and within a coverage litigation, and will explore the legal and practical issues that could arise.

SPEAKERS: **Andrew Kent,** *Chiesa, Shahinian, & Giantomasi PC,* West Orange, NJ
Patricia Ricciuti, *The Hartford,* Hartford, CT

9:40 AM – 10:25 AM **PRACTICAL CONSIDERATIONS IN EXAMINATIONS UNDER OATH**

Not every fidelity claim requires an examination under oath, but in the right circumstances, examinations under oath are a powerful tool which can be used to get critical information. In this presentation, we will explore some Practical Considerations in Examinations Under Oath in the complex fidelity claim context, including the scope of an insurer's right to take an examination under oath; to what degree an insured may refuse to submit to an examination; the insured's right to assert privileges during the examination; and reasons to decide whether an examination under oath is a necessary component of the claim investigation.

SPEAKERS: **Mark J. Krone,** *Anderson McPharlin & Connors LLP,* Los Angeles, CA
Theresa Gooley, *Travelers Bond & Specialty Insurance,* Minnetonka, MN

10:25 AM – 10:40 AM **MORNING BREAK**

LATE MORNING TOPICS

10:40 AM – 11:30 AM

PRACTICAL POINTS: ESTABLISHING THE PERSONAL CONNECTION IN THE CLAIM

Speakers will discuss the important use of establishing a personal connection with the insured and what to do when communication and cooperation fail. Helping to provide incentive will help to complete the investigation and move the claim forward.

SPEAKERS:
Michael Keeley, *Strasburger & Price LLP,* Dallas, TX
Robert M. Flowers, *Travelers,* Hartford, CT
Megan M. Manogue, *Berkley FinSecure,* Towson, MD
Kimberly Russell, *Chubb Insurance,* Basking Ridge, NJ

11:30 AM – 12:00 PM

EFFECTIVE CLAIM COMMUNICATIONS

This presentation will address the importance of communications between the insurer and insured throughout the life of a claim, from the initial claim submission to the investigation to the ultimate coverage determination. Whether the communications are informal or likely to be an exhibit to coverage suit, clear and effective communication with an insured is among the most important practices an insurer can implement. Such communications allow an insurer to manage expectations, educate the insured as to the potential coverage provided by the bond or policy, and establish a cooperative working relationship that will best serve the investigation. The presentation will specifically highlight effective strategies for conveying the intent and purpose of the investigation, updating the status of the investigation, reserving rights, and issuing a final coverage determination (particularly if that final determination is a denial of coverage).

SPEAKERS:
Justin Wear, *Manier & Herod, P.C.,* Nashville, TN
Carl Grant, *Travelers,* Hartford, CT

12:15 AM – 2:00 PM

LUNCH – ON YOUR OWN

AFTERNOON TOPICS

2:00 PM – 2:40 PM

CRIMINAL PROSECUTION OF THE ACCUSED

This panel will discuss issues concerning the insured's investigation in parallel with a criminal investigation or prosecution. Discussion will address timing and impact, the principal's assertion of the Fifth Amendment privilege, and whether prosecution of a criminal complaint can be required of the insured, as well as the admissibility of criminal proceedings and results and their potential burden shifting effect.

SPEAKERS:
T. Scott Leo, *The Law Office of T. Scott Leo, P.C.,* Chicago, IL
Judith Blake, *AIG,* New York, NY
Chris McKibbin, *Blaney McMurtry LLP,* Toronto, CA

2:40 PM – 3:20 PM

ETHICAL ISSUES FOR THE INVESTIGATION

This three member panel will be discussing the ethical issues for investigation of fidelity claims including the ethical concerns of contacting the accused, present and former employees, and obtaining employee files. We will also address the ethical considerations involved with the utilization of confidentiality agreements. The written materials focus on ethical opinions from multiple jurisdictions that have addressed these issues.

SPEAKERS:
Paula Lee Chambers, *Hinshaw & Culbertson LLP,* Boston, MA
Chad Vacarella, *Hinshaw & Culbertson LLP,* Boston, MA
Scott Levin, *McElroy, Deutsch, Mulvaney & Carpenter, LLP,* Philadelphia, PA

3:20 PM – 3:30 PM

AFTERNOON BREAK

3:30 PM – 4:15 PM **ESI: PRODUCTION OF AND SEEKING ELECTRONIC TREASURES**

This panel will discuss planning out the production and discovery of documents including the impact of new Federal Rules, state law rules, preservation letters, sanctions and spoliation issues. Further, this panel will discuss issues concerning cybercrimes and the document production within the Fidelity context.

SPEAKERS:
Mark Gamell, *Torre, Lentz, Gamell, Gary & Rittmaster LLP,* Jericho, NY
Brian Gunther, *Torre, Lentz, Gamell, Gary & Rittmaster LLP,* Jericho, NY
Nina Durante, *Liberty Mutual Insurance Company,* Seattle, WA
Matt Scott, *Envista Forensics,* Columbus, OH

4:15 PM – 5:00 PM **WHAT CLAIM MANAGERS WOULD REALLY LIKE TO SAY TO CONSULTANTS AND DEFENSE ATTORNEYS IN COMPLEX FIDELITY LITIGATION CASES**

Speakers will provide a candid heart to heart narrative by claims handlers speaking to their attorneys and their experts, to provide an inside view of the concerns and motivations of the claims handlers and address what they want and need from their professionals.

SPEAKERS:
Susan Sabouni, *Property Claims Manager, Philadelphia Insurance,* Bala Cynwyd, PA
Debbie Dettmer, *Managing Director, Risk Management and Insurance Services, FCC Services,* Denver, CO
Dee Studler, *SDC CPAs, LLC,* Aurora, IL
Ayanna Mishoe-Brooker, *Claims Attorney, Liberty International Underwriters,* East Orange, NJ
Joanne Wyrzkowski, *AIC Philadelphia Insurance,* Ft. Lauderdale, FL
Regina Tobias, *Senior Property Adjuster, Liberty Mutual Insurance Company,* Boston, MA

FRIDAY PROGRAM

8:30 AM – 8:45 AM **INTRODUCTION**

MORNING TOPICS

8:45 AM – 9:20 AM **CONFIDENTIALITY AGREEMENTS**

This presentation will discuss the role of confidentiality agreements in the context of complex fidelity claims – what they must address, key provisions to include, and best practices to achieve protection of the claims file and the insured's records. Additionally, he will address obtaining SARS, federal/regulatory filings and investigatory material.

SPEAKERS:
Andy Chambers, *Jennings, Strouss & Salmon PLC,* Phoenix, AZ
Douglas Hall, *Westfield Insurance,* Westfield Center, OH

9:20 AM – 10:00 AM **DEALING WITH BOND DEFENSES**

This panel will discuss substantive bond defenses available to the insurer and the role of these defenses in limiting liability in the fidelity context. The defenses addressed will include late notice, late proof of loss, interference with subrogation rights, and the limits of liability, as well as single loss limits and stacking. Issues concerning timing and when to raise, development of the elements, and the avoidance of waiver.

SPEAKERS:
Lee Brewer, *Bryan & Brewer, LLC,* Columbus, OH
Evan Wheeler, *EMC Insurance Company,* Des Moines, IA
Matt Kalin, *Travelers,* Hartford, CT

10:00 AM – 10:15 AM **MORNING BREAK**

10:15 AM – 10:45 AM

MOTIONS FOR SUMMARY JUDGMENT AND DECLARATORY JUDGMENT ACTIONS

This panel will address the strategic use of determinative motions in a complex fidelity litigation. Topics will include timing and advisability at various stages of litigation, prudence of filing based on the strength of positions, and the burdens of proof required of motions for summary judgment and dismissal. The discussion will also address potential downfalls and pitfalls commonly seen in motion practice, and how a practitioner might avoid them.

SPEAKERS:
Amy Malish, *Pugh Accardo LLC,* New Orleans, LA
Maura Pelleteri, *Pugh Accardo LLC,* New Orleans, LA
Lynda Jensen, *Travelers,* Hartford, CT

10:45 AM – 11:40 AM

A VIEW FROM THE FRONT LINES: CLIENT PANEL ON RECURRING ISSUES, MODERN CHALLENGES AND PRESENT DEVELOPMENTS

As a part of this end-of-program panel, industry leaders will address those issues they view as critical considerations and trends, both new and ongoing, which affect and influence our industry's claims handling every day. Our panel will deliver poignant commentary and raise our awareness of those issues that they view as deserving of the fidelity industry's new or renewed focus and consideration, and will provide insight and guidance on where these critical developments and trends might head in the coming year.

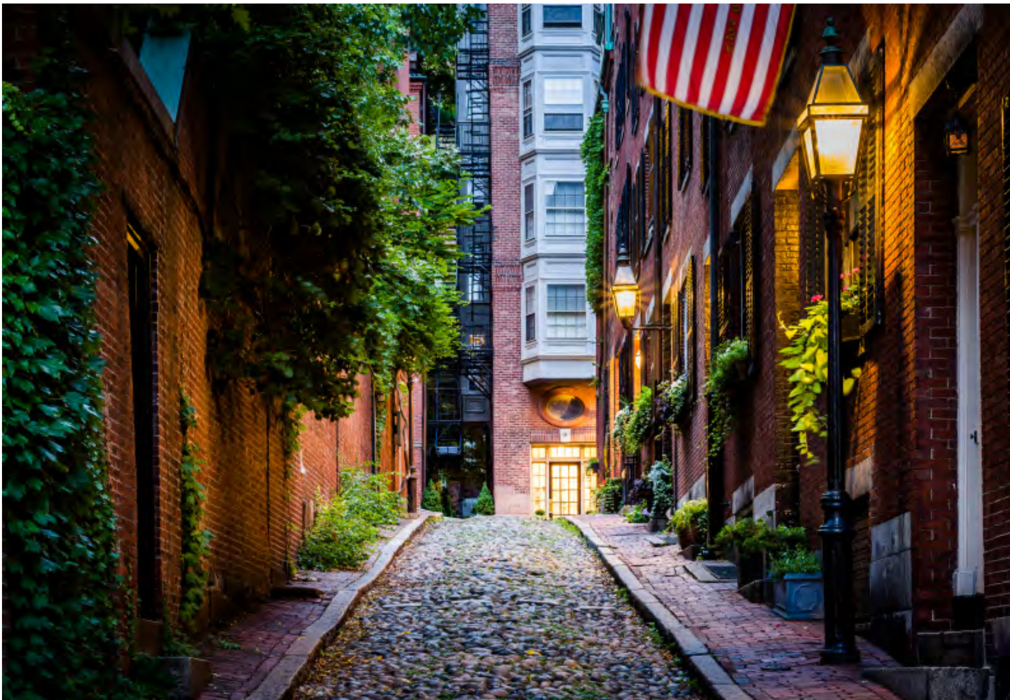
SPEAKERS:
Ken West, *Chubb Insurance,* Ellington, CT
Judith Blake, *AIG,* New York, NY
Matt Scott, *Envista Forensics,* Columbus, OH
Ted Lansdale, *Travelers,* Hartford, OH

11:40 AM –12:00 PM

CLOSING REMARKS

As a part of the Closing Remarks, there will be time for final questions and open discussion by the attendees.

SPEAKER:
Toni Scott Reed, *Committee Chair, Strasburger & Price, LLP,* Dallas, Tx



REGISTRATION FORM

ABA TORT TRIAL & INSURANCE PRACTICE SECTION (TIPS)
MANAGING AND LITIGATING THE COMPLEX FIDELITY CLAIM

Sheraton Boston Hotel • Boston, MA • November 8–10, 2017

REGISTRATION DEADLINE: OCTOBER 20, 2017

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/COMPANYWHAT STATE(S) ARE YOU LICENSED IN?

ADDRESS

CITY STATE ZIP

(AREA CODE) BUSINESS TELEPHONE FACSIMILE

E-MAIL ADDRESS

Are you attending your first TIPS National Conference? ❑ Yes ❑ No

How many Fidelity & Surety Law Committee Programs have you attended (including this one)?

❑ 3 or less ❑ 4 or more

❑ I am a member of the ABA and wish to join the Tort Trial & Insurance Practice Section and I enclose a separate check for $50 made payable to the American Bar Association.

2. REGISTRATION FEES:

	On or Before 10/20/17	After 10/20/17	QTY	Total
TIPS Member	$500	$575	_____	_____
Insurance Company Employee				
TIPS/Insurance Company	$175	$200	_____	_____
Non TIPS/Insurance Company	$250	$300	_____	_____
General Attendee	$650	$750	_____	_____
Government Employee	$295	$350	_____	_____
Law Student	$200	$300	_____	_____

3. MATERIALS

❑ I will not be attending the meeting and wish to order the program materials on a flash drive for $150.

4. TOTAL PAYMENT

TOTAL ________

5. 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
Managing and Litigating the Complex Fidelity Claim
Attn: Service Center/Meeting
Event Code: IL1711FFM
321 North Clark Street, Floor 16
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: Friday, October 20, 2017

Hotel Deadline: Tuesday, October 17, 2017

ADVANCE REGISTRATION

Visit the TIPS website to register at ambar.org/tips or complete the registration form included in this brochure for Managing and Litigating the Complex Fidelity Claim. The registration fee includes admission to the course materials, continental breakfast, breaks and welcome 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 20, 2017. Registration reservations will be confirmed in writing within 10 business days.

ON-SITE REGISTRATION

On-site registrations will be accepted if space is available. Call Donald Quarles at 312.988.5708 or email donald.quarles@americanbar.org, 72 hours prior to the program to confirm that space is available. Onsite 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 20, 2017. In order to receive a refund (less a $50 administrative fee), the ABA must receive written cancellation by October 20, 2017. Registrants who are unable to attend may send a substitute or will receive course materials in lieu of a refund.

HOTEL INFORMATION

A limited number of rooms have been blocked for program registrants at the Sheraton Boston Hotel, 39 Dalton Street, Boston, MA 02199. Hotel reservations can be made by calling the hotel directly at 617.236.2000 or toll-free at 800.325.3535. The room block will be held until Tuesday, October 17, 2017 or until exhausted. After that date, reservations will be confirmed based on availability. To receive the special ABA negotiated hotel room rate of $275.00 single/double plus 14.45% tax, identify yourself as attending the ABA Tort Trial & Insurance Practice Section FSLC & FLA Fall Meeting when making reservations.

Hotel check-in is 3:00 p.m. and checkout is 12:00 p.m. (noon). All reservations must be guaranteed by credit card or deposit check. Individuals with guaranteed reservations must cancel their reservations 24 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.

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With ABA Egencia*, you can automatically obtain ABA negotiated airfare discounts for travel to the ABA Meetings. ABA Egencia enables you to purchase the best airfare at the time of booking, by providing you with the ability to search for and compare fares from virtually every airline serving the destination.

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Online Discount Code: **ZXDR621691**

Delta: Call 800.328.1111
Discount available at: **www.delta.com**
Meeting Event Code: **NMP56**
Online Discount Code: **NMP56**

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The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, CT, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, ME, MN, MP, MS, MO, MT, NH, NJ, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 9.0 CLE credit hours (including .50 ethics hour) in 60-minute states, and 10.80 credit hours (including 1 ethics hour) in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit www.americanbar.org/cle/mandatory_cle.html or contact Donald Quarles at donald.quarles@americanbar.org or 312.988.5708.

MEMBERSHIP INFORMATION

For more information about membership in the ABA or the Tort Trial & Insurance Practice Section (TIPS), please visit us online at www.abanet.org/tips/memberapp.html 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 the ABA promptly at 312.988.5708. Reasonable advance notice is requested.

GET CONNECTED WITH TIPS!

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

SCHOLARSHIPS AVAILABLE!

ATTENTION TIPS MEMBERS: 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 www.abanet.org/tips/scholarship.html or contact Daniel Chavez at Daniel.Chavez@americanbar.org.

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MAY 2–5, 2018

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