

AN ANALYSIS OF FIDELITY CLAIMS FOR THE MODERN WORLD

November 7–8, 2018
Ritz-Carlton Hotel
Philadelphia, PA

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



CLE 6.0 CLE credit hours in 60-minute states and 7.2 credit hours in 50-minute states.



GREETINGS

Dear FSLC Members,

It is my pleasure to invite you back to Philadelphia – the home of the Liberty Bell, Independence Hall, Rocky Balboa, the cheesesteak, and, yes, the defending Super Bowl Champions – for the 2018 ABA Tort Trial & Insurance Practice Section (TIPS) Fidelity & Surety Law Committee's Fall Fidelity CLE program. I hope you will join us at the Ritz-Carlton Philadelphia for a program that will focus on emerging trends in fidelity claims handling. (You may recall seeing images of giddy fans standing on the hotel's awning the night the Eagles won the Super Bowl.)

This program will include practical information, tips, and discussions that will benefit the youngest to the most experienced in our industry. Please bring your colleagues, even if they don't usually attend these programs in person. We deliberately selected the location of this program to maximize the attendance of fidelity claims professionals.

The 2018 FSLC Fall Meeting, titled "An Analysis of Fidelity Claims for the Modern World," will include many of the FSLC's most distinguished speakers from companies, law firms, and consulting firms, who will address important substantive and practical issues germane to today's fidelity claims handling. The program chairs have designed a lineup of presentations that will update you on recent developments and claims handling strategies. The focus will be on a pragmatic discussion, and plan for implementation, of specific skills with an eye toward pressing legal issues, ethical issues, and strategy. The topics run through most, if not all, fidelity claims. The presentations and wide-ranging discussion will benefit all practitioners and professionals, regardless of the role they play in the claims process.

We are pleased once again to join the FSLC Fall Meeting with the Fidelity Law Association's annual meeting, which will occur at the Ritz-Carlton Philadelphia on Wednesday, November 7. The FLA always 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.

Shortly after the FLA program on Wednesday, the FSLC will host a Welcome Reception. Please make plans to drop by to catch up with friends and colleagues. Dinner is on your own on Wednesday night. This is the night to gather your friends and head out for a night in Philadelphia.

After the program on Thursday night, the FSLC will host a reception and buffet dinner at the hotel for all program attendees and their guests. We will, of course, have a premium bar. A central focus of the FSLC for each of this year's programs is to provide inclusive networking opportunities for all members. The FSLC prides itself on the collegiality of its members. The best way to stay connected to each other is to spend social time together. Please stay with us for the reception and dinner on Thursday night. There will be plenty of time after dinner for a late night excursion. Whether this will be your first program or your twentieth, you will enjoy the evening of lively discussion and camaraderie.

While many attendees cannot resist wearing suits to this conference, feel free to come business casual if it makes you more 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. I look forward to seeing you in Philadelphia.

Brett D. Divers

Mills Paskert Divers

Chair, ABA TIPS Fidelity and Surety Law Committee

AGENDA

"MANAGING AND LITIGATING THE COMPLEX FIDELITY CLAIM"

WEDNESDAY, NOVEMBER 7

5:45 PM – 6:45 PM **WELCOME RECEPTION**

THURSDAY, NOVEMBER 8

7:30 AM – 8:30 AM **CONTINENTAL BREAKFAST**

7:30 AM – 5:00 PM **REGISTRATION**

8:30 AM – 8:45 AM **INTRODUCTION TO PROGRAM**

PROGRAM CHAIRS: **Robin R. Segal-Gonzalez**, *Chubb*, Basking Ridge, NJ
Justin D. Wear, *Manier & Herod, P.C.*, Nashville, TN

MORNING TOPICS

8:45 AM – 9:15 AM **NEW DEVELOPMENTS IN CYBERCRIME – A DISCUSSION OF CYBER EXTORTION AND OTHER "HYBRID" CLAIMS INVOLVING BOTH A HACK OR BREACH AND SOCIAL ENGINEERING FRAUD**

There is a growing, albeit inconsistent, body of case law addressing traditional "hacking" losses and traditional social engineering losses. However, insureds and insurers are increasingly faced with "hybrid" cyber claims in which the fraudster hacked or breached an insured's system while also utilizing traditional social engineering tactics such as fraudulent emails. The speakers will discuss how to handle these new claims under the currently used insuring language and legal authority.

SPEAKERS: **Amy S. Malish**, *Pugh Accardo*, New Orleans, LA
Frances A. Rivera, *AXIS*, Berkeley Heights, NJ

9:15 AM – 9:45 AM **WAS THAT THEFT DISHONEST? A COMPARISON OF EMPLOYEE DISHONESTY COVERAGE VS. EMPLOYEE THEFT COVERAGE**

Employee dishonesty and employee theft may sound like functional equivalents, and indeed there is a great deal of overlap in coverages. However, there are also important differences that may, depending on the claim, be dispositive to coverage. This presentation reviews the historical developments that gave rise to the alternative forms of coverage and highlights the important differences between dishonesty coverage as compared to theft coverage.

SPEAKERS: **Andy J. Chambers**, *Jennings Strouss*, Phoenix, AZ
Theresa M. Biederman, *Berkshire Hathaway Specialty*, New York, NY
Amanda T. DiMatteo, *Peabody & Arnold, LLP*, Boston, MA





9:45 AM – 10:30 AM

THE FIDELITY RECOVERY PLAYBOOK: PRACTICAL STRATEGIES FOR MAXIMIZING RECOVERY

Fidelity insurers are leaving money on the table. The objective of this presentation is to ensure that first-party claims handlers and recovery/subrogation personnel are working together strategically to identify potential recovery targets (defaulters, confederates, auditors and banks), and that they can, where appropriate, deal with first-party and recovery efforts concurrently, so as to maximize recovery. Topics include the use of Interim Recovery Agreements (also known as Mitigation Agreements) to “jump the gun” on recovery efforts before the carrier is in a formal subrogation position, and practical litigation strategies and tools carriers can use to maximize recoveries as against each type of target.

SPEAKERS: Elizabeth S. Carley, *Cincinnati Insurance Company*, Cincinnati, OH
Stefan R. Dandelles, *Kaufman Dolowich Voluck, LLP*, Chicago, IL
Christopher McKibbin, *Blaney McMurtry, LLP*, Toronto, ON
Matthew C. Kalin, *Travelers Bond & Specialty Insurance*, Baintree, MA
Angela J. Lee, *Group Claims – Specialty Lines, BEAZLEY GROUP*, Atlanta, GA

10:30 AM – 10:45 AM

MORNING BREAK

LATE MORNING TOPICS

10:45 AM – 11:30 AM

LESSONS FROM THE “GREAT RECESSION” – WHAT HAVE WE LEARNED, AND WHAT PITFALLS WILL WE FACE AGAIN?

A panel discussion regarding “lessons learned” from the 2008 banking and financial crisis (and how to apply those lessons in the future). Panelists will discuss issues related to failed banks, FDIC claims against former failed-bank directors and officers, and related D&O insurance claims, issues, and litigation. The panel includes an FDIC representative, outside counsel for the FDIC, an insurance company representative, and outside counsel for insurance companies.

SPEAKERS: Dolores Parr, *Zurich*, Catonsville, MD
Loren D. Podwill, *Bullivant Houser Bailey, PC*, Portland, OR
Michael Pollack, *Federal Deposit Insurance Company*, Arlington, VA
Andrew M. Reidy, *Lowenstein Sandler, LLP*, Washington, DC
Robin R. Segal-Gonzalez, *Chubb*, Basking Ridge, NJ

11:30 AM – 12:00 PM

TREATMENT OF DUTIES IMPOSED BY FIDELITY COVERAGES ON THE INSURED’S NOTICE OF LOSS, PROOF OF LOSS, AND FILING OF SUIT – A SURVEY OF THE FIFTY STATES (AND D.C.)

Fidelity coverages impose certain duties on an insured concerning the timing of various claims procedures. Whether an insurer may strictly enforce these time periods to avoid coverage is state-specific. This survey seeks to provide each state’s treatment of these time periods as it applies to fidelity coverages. If a state does not discuss fidelity coverages specifically, the survey will discuss the state’s treatment of insurance generally. The survey will be a useful desktop guide to fidelity practitioners.

SPEAKERS: Richard E. Baudouin, *Krebs Farley, PLLC*, New Orleans, LA
Carl M. Grant, *Travelers Bond & Specialty Insurance*, Alpharetta, GA

12:00 NOON – 1:30 PM

LUNCH – ON YOUR OWN

12:00 NOON – 1:30 PM

WOMEN’S INVOLVEMENT SUBCOMMITTEE NETWORKING LUNCH



AFTERNOON TOPICS

1:30 PM – 2:15 PM

INCOMM, AMERICAN TOOLING, AND MEDIDATA—WHAT IS THE CURRENT STATE OF “DIRECT LOSS” IN THE CONTEXT OF CYBER CRIME?

This presentation will discuss the current state of the law on social engineering claims in light of recent court decisions that are increasingly creating a jurisdictional divide on whether social engineering losses are covered under the traditional electronic coverages, particularly with respect to the direct loss requirement. It will also look at the impact of Social Engineering Fraud/Fraudulently Induced Transfers coverage endorsements, and where insurers go from here.

SPEAKERS: **Christie M. Bird**, *Frenkel, Lambert, et al*, New York, NY
Reina Dorvilier, *Specialty Lines Claims, BEAZLEY GROUP*, Philadelphia, PA

2:15 PM – 3:00 PM

THE NEW FRONTIER OF DIRECT CAUSATION AND FICTITIOUS COLLATERAL CASES

This presentation traces the development of the fictitious or worthless collateral doctrine under fidelity policies, such as Insuring Agreements D and E of the financial institution bond, with an emphasis on recent expansions and new applications of the doctrine. The presentation will also discuss the origin and rationale behind the doctrine – assigning credit risks to the insured – and challenges to that division of risks. The presentation will then predict how the worthless collateral doctrine may be applied and further expanded in the future.

SPEAKERS: **Mark J. Johnson**, *Gregerson Rosow, et al*, Minneapolis, MN
Alicia Garcia, *AmTrust North America*, Chicago, IL

3:00 PM – 3:15 PM

AFTERNOON BREAK

3:15 PM – 3:45 PM

2017-2018 FIDELITY LAW UPDATE

The panelists will examine the good, the bad, and the ugly of fidelity opinions over the past year.

SPEAKERS: **Frank J. Marsico**, *Watt Tieder Hoffar & Fitzgerald, LLP*, Chicago, IL
Nina Durante, *Liberty Mutual Group*, Seattle, WA

3:45 PM – 4:45 PM

TAKING IT FROM THE TOP: AN IN-DEPTH ANALYSIS OF HANDLING COMPLEX FIDELITY CLAIMS FROM THE BEGINNING

The panelists will take a deep dive into how to handle a complex fidelity claim, from the very beginning through litigation. They will address, among other things, how a parallel criminal investigation or prosecution affects the claims-handling process, what documents the claims handler should obtain from the beginning, and whether under oath examinations are necessary or should be delayed until litigation becomes necessary. In addition, the panelists will address their thought process on the ever-looming threat of bad faith and how it affects their investigation and claims-handling protocol. This will be an engaging presentation with a lot of down-to-earth advice.

SPEAKERS: **Carla C. Crapster**, *Clark Hill Strasburger*, Dallas, TX
Ann Intili Gardiner, *ABA Insurance Services*, Mayfield Heights, OH
Christopher Money, *Hagen Streiff Newton & Oshiro*, Irvine, CA
Juliet P. Powell, *Chubb*, Basking Ridge, NJ
Ryan J. Weeks, *Mills Paskert Divers*, Tampa, FL

4:45 PM – 5:15 PM

CLOSING REMARKS

6:00 PM – 9:00 PM

RECEPTION AND DINNER

SAVE THE DATES!



Mid-Winter Meeting
January 16 – 18, 2019
Hilton San Diego Bayfront, San Diego, CA

The FSLC will hold its traditional business meetings on Wednesday, January 16. On Thursday and Friday, we will present two programs. The surety program will present *The Law of Performance Bonds, 3d*. The fidelity program will focus on Ponzi schemes and mercantile bonds. In addition to substantive presentations, the Fidelity program will present a mock trial that will include jury deliberations. This video presentation will provide a fascinating window into how juries decide cases. Anyone involved in litigation will benefit from understanding how juries decide cases and what motivates them. Both programs will end at noon on Friday to allow everyone to enjoy the typically mild Southern California temperatures when it is considerably colder in other parts of the country. There will be several networking events scheduled, so be sure to bring your associates and colleagues to our biggest conference of the year.



Spring Meeting
May 8 – 10, 2019
JW Marriott Austin, Austin, TX

This program, "The Complex Construction Issues Facing the Completing Surety," will include presentations discussing various technical aspects of construction as well as applicable legal principles. We will stay together as a group for some fun after the program on Thursday evening. Excursions for Friday afternoon after the program are in the planning stages. More details about all of that will follow after the first of the year. The FSLC Spring Leadership Meeting will take place on Saturday morning and is open to all FSLC members.

REGISTRATION FORM

ABA TORT TRIAL & INSURANCE PRACTICE SECTION (TIPS) AN ANALYSIS OF FIDELITY CLAIMS FOR THE MODERN WORLD

Ritz-Carlton Hotel • Philadelphia, PA • November 7–8, 2018

REGISTRATION DEADLINE: FRIDAY, OCTOBER 26, 2018

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 TIPS National Conference? Yes No

I am a member of the ABA and wish to join the Tort Trial & Insurance Practice Section.

I have enclosed a separate check for \$50 made payable to the American Bar Association.

2. REGISTRATION FEES:

	On or Before	After		
	10/26/18	10/26/18	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:
[www.americanbar.org/
groups/tort_trial_
insurance_practice.html](http://www.americanbar.org/groups/tort_trial_insurance_practice.html)

2. MAIL:
American Bar Association
Tort Trial & Insurance Practice Section
An Analysis of Fidelity Claims for the Modern World
Attn: Service Center/Meeting
Event Code: IL1811FFM
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 26, 2018

Hotel Deadline: Tuesday, October 16, 2018

ADVANCE REGISTRATION

Visit the TIPS website to register at www.americanbar.org/groups/tort_trial_insurance_practice.html or complete the registration form included in this brochure for Managing and Litigating the Complex Fidelity Claim. The registration fee includes admission to the program, 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 26, 2018. Registration reservations will be confirmed in writing within 10 business days.

ON-SITE REGISTRATION

On-site registrations will be accepted if space is On-site registrations will be accepted if space is available. Call Danielle Daly at 312.988.5708 or email Danielle.daly@americanbar.org, 72 hours before 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 26, 2018. In order to receive a refund (less a \$100 administrative fee), the ABA must receive written cancellation by October 26, 2018. 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 Ritz-Carlton Philadelphia, 10 Avenue of the Arts, Philadelphia, PA 19102. Hotel reservations can be made by calling the hotel directly at 215.523.8000 or toll-free at 800.542.8680. The room block will be held until Tuesday, October 16, 2018 or until exhausted. After that date, reservations will be confirmed based on availability. To receive the special ABA negotiated hotel room rate of \$269 single/double plus 15.5% tax, identify yourself as attending the ABA Tort Trial & Insurance Practice Section FSLC & FLA Fall Meeting when making reservations.

Hotel check-in is 4:00 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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United: Call 800.426.1122

Agreement Code: **633818**

Z Code: **ZE6X**

Discount available at: www.united.com

Online Discount Code: **ZE6X633818**

Delta: Call 800.328.1111

Discount available at: www.delta.com

Meeting Event Code: **NMR3V**

Online Discount Code: **NMR3V**

CLE INFORMATION

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, MS, MO, MP, 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 6 CLE credit hours in 60-minute states, and 7.2 credit hours 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 https://www.americanbar.org/cle/mandatory_cle.html or contact Danielle Daly at danielle.daly@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 Theresa Livingston at theresa.livingston@americanbar.org.

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