

AMERICAN BAR ASSOCIATION

THE FIDELITY AND SURETY LAW
COMMITTEE 2014
MID-WINTER PROGRAM:

CONSTRUCTION: WHAT WERE THEY THINKING?
UNDERSTANDING THE CONSTRUCTION PROJECT
FROM THE PUBLIC OWNER'S PERSPECTIVE

FIDELITY: EXPANSION AND CONTRACTION:
ADDING TO AND SUBTRACTING FROM THE
STANDARD BOND

FUNDAMENTAL RIGHTS OF SURETYSHIP –
REVIEW OF INDEMNITY AND THE OPTIONS
AVAILABLE TO THE SURETY

JANUARY 23–24, 2014
THE WALDORF~ASTORIA HOTEL
NEW YORK, NY

SPONSORED BY
TORT TRIAL & INSURANCE PRACTICE
SECTION FIDELITY & SURETY LAW
COMMITTEE

UNITING PLAINTIFF, DEFENSE, INSURANCE,
AND CORPORATE COUNSEL TO ADVANCE
THE CIVIL JUSTICE SYSTEM

ABA
Defending Liberty
Pursuing Justice



WELCOME

GREETINGS:

The Fidelity & Surety Law Committee of the American Bar Associations Tort Trial & Insurance Practice Section (TIPS), welcomes you once again to the Waldorf-Astoria in New York City for its Mid-Winter Meeting. The seminars featuring fidelity, construction and surety programs will begin on Thursday, January 23 and extend to Friday, January 24. Join us for the following presentations:

Construction: What Were They Thinking? Understanding the Construction Project from the Public Owner's Perspective

On Thursday, January 23, Co-Chairs Jamie Ziegler, Mike Pipkin, and Shannon Briglia have put together a thought provoking program examining the construction project from the perspective of the public owner. They will use a series of presentations and breakout sessions to discuss how a public project is handled from its inception through closeout.

The first plenary session will have a panel discuss how a public owner evaluates various delivery systems, financing options, and other logistics to assess a project's beginning. The second plenary session will focus on how the public owner assembles its team of professionals, selects a particular contract form to use, and then decides how best to prepare and issue the contract documents. After the break, participants will have a choice between three breakout sessions that will discuss (a) project finance options such as Public Private Partnerships and GAP financing, (b) options for project insurance including OCIP/CCIP programs, or (c) expectations for participation of disadvantaged business entities on state and federal projects.

After lunch, the third plenary session will discuss administration of the contract before considerations of a default. This session will examine the political, financial and resource-based pressures imposed on the public owner and the various options available to the owner to get a project back on track. This will be followed by another group of breakout sessions covering (a) dispute resolution, (b) options available to the owner as it evaluates performance by the contractor, or (c) how a public owner goes about closing out a project and achieving substantial completion. The final plenary session will cover project ethics including issues confronted by counsel for the public owner including conflicts of interest, limitations on the attorney's authority, and the confidentiality of public records.

The co-chairs have assembled speakers from state, federal and local owners including departments of transportation, school boards, port authorities, water reclamation districts and architects. We believe this is truly a unique opportunity to "peek behind the curtain," to obtain a perspective of how the public owner evaluates and then administers a construction project.

Fidelity: Expansion and Contraction: Adding to and Subtracting from the Standard Bond

The FSLC will again offer a day and a half of fidelity programming. On Thursday, January 23, Co-Chairs Gary Valeriano and Ann Gardiner have assembled panels and individual speakers to address issues that arise when the “standard” fidelity policy is altered by amendments or endorsements.

The program begins with a panel discussion of brokers, who are typically the point of contact with customers seeking modification of the standard financial institution bond or crime policy. This panel will discuss the realities of the marketplace and how these amendments to standard policies are negotiated and finalized. The next panel will move up the chain to the company underwriters, and will discuss proposed modifications to standard policies from the perspective of the carriers and cover issues such as market conditions, customer relations and risk assessment. After a break, a series of speakers will discuss modifications to the employee dishonesty provisions, computer crime endorsements, and endorsements that alter construction of coverage and exclusions.

After lunch, a panel of fidelity underwriters will discuss how past endorsements and changes to the policies have gradually become elements of the standard policy and what might be expected in the future. This “peek into the future” should be an interesting discussion.

The next group of speakers will discuss changes in the standard policy regarding discovery of loss, knowledge of prior dishonesty, definition of the insured and other typical endorsements. After the break, the program continues with a series of presentations on endorsements covering title and escrow agents, 1031 exchange companies, ERISA and pension plans, public officials/faithful performance bonds, and endorsements related to funds transfers.

On Friday morning, January 24, we will present a mock trial of a computer crime claim. There will be opening statements, witness testimony and closing arguments for the “trial.” Using the services of *DecisionQuest*, attendees will have the opportunity to observe how members of a jury evaluate the presentations and arguments and compare those reactions to those of an industry panel. This format should provide thought provoking discussions to see how different groups evaluate the issues and testimony.

Suretyship: Fundamental Rights of Suretyship – Review of Indemnity and the Options Available to the Surety

On Friday, January 24, Co-Chairs John Fatino, Peter Karney and Cynthia Rodgers-Waire will present a program focusing on indemnity and the options afforded the surety under a typical indemnity agreement. A basic tenet of suretyship is that “it is not insurance.” The availability of indemnity lies at the heart of that distinction.

The program begins with a review of the historical basis for indemnity at common law and the creation of the right of indemnity. The next presentation focuses on steps used to document the indemnity obligation and typical elements that are included in written indemnity agreements. Two sessions dealing with steps that the surety can take to enforce its indemnity rights will follow. These include pre-litigation steps like gaining access to books and records and procurement of collateral and the more adversarial steps necessary to enforce the terms of the written agreement. The morning concludes with a panel of underwriters discussing the role of indemnity in the underwriting process.

After lunch, a panel will review uses of the powers granted to the surety in the indemnity agreements, including the right to settle claims, avoid contracts, and mitigation of damages. The panel will discuss the defenses available to the principal and indemnitors when the surety seeks indemnification. The next session will discuss how bankruptcy filings can impact the surety's rights of subrogation and other restrictions in gaining access to remaining contract funds. The final session will discuss ethical issues faced by both inside and outside counsel in joint representation situations that can occur in a claim asserted by the obligee or claimant.

All participants will receive a copy of the most recent edition of the FSLC's publication of *The Surety's Indemnity Agreement: Law and Practice, 2nd Edition*.

There will be social events including a cocktail party for all of the speakers, new members, young professionals and the FSLC leadership following the Thursday presentations. This will be followed by the annual cocktail party for all attendees from 6:00 p.m. to 7:00 p.m. Gene Beckham, Chair of TIPS, will be attending the program as well as both cocktail parties, and this will be an opportunity for attendees to meet the Chair of this important ABA section.

For the Young Professionals, we will hold a Dutch Treat dinner on Wednesday evening followed by the traditional "Hold 'Em" tournament that has been a huge success in the past. As we have done in recent years, there will be no lunches served on Thursday or Friday during the seminars to provide additional opportunities for networking among the attendees.

As you can see, the MWM offers a series of programs that are unique and thought provoking. The co-chairs for all three programs have worked hard along with their presenters on these programs, and I am sure you will not be disappointed.

I look forward to seeing everyone in New York in January.

Very truly yours,

David C. Olson
Chair, Fidelity & Surety Law Committee
Frost Brown Todd LLC
Cincinnati, OH

FACULTY CONSTRUCTION PROGRAM

CONSTRUCTION: WHAT WERE THEY THINKING? UNDERSTANDING THE CONSTRUCTION PROJECT FROM THE PUBLIC OWNER'S PERSPECTIVE

JEFFREY A. APPLEBAUM

Thompson Hine LLP
Cleveland, OH

LYNN R. AXELROTH

Ballard Spahr LLP
Philadelphia, PA

DAVID BERGQUIST

Chief Counsel
University of California Riverside
Riverside, CA

BOYD BLACK

Assistant Vice President, Capital Project Delivery
University of Chicago
Chicago, IL

MARI BOCHANIS

Former Project Attorney
Southern Nevada Water Authority
Las Vegas, NV

SHANNON J. BRIGLIA

Program Co-Chair
BrigliaMcLaughlin, PLLC
Vienna, VA

CATHERINE CROW

Team Leader for Real Property Litigation
General Services Administration
Washington, D.C.

EMILIO CRUZ

Assistant General Manager, Infrastructure
San Francisco Water Power Sewer
San Francisco, CA

KURT L. DETTMAN

Constructive Dispute Resolutions
Hingham, MA

JAMES DIWIK

Sedgwick LLP
San Francisco, CA

ROBERT J. FRANCO

Franco Maroney LLC
Chicago, IL

ROGER L. DRISKELL, PE

Acting Director Office of Innovative Project Delivery
Illinois Department of Transportation
Springfield, IL

MARK HOVATTER

Chief Facilities Executive
Los Angeles Unified School District
Los Angeles, CA

SUE LEE

US Infrastructure Advisory Leader
Ernst & Young Infrastructure Advisors
Philadelphia, PA

RAY LEMMING

Construction Claims Administrator
Chicago Metropolitan Water Reclamation District
Chicago, IL

BENJAMIN D. LENTZ

Torre, Lentz, Gamell, Gary & Rittmaster, LLP
Jericho, NY

ROBERT MAGRINI

Hayes Magrini & Gatewood
Oklahoma City, OK

RUDY MALFABON

Director
Nevada Department of Transportation
Carson City, NV

LAUREN P. MCLAUGHLIN

BrigliaMcLaughlin, PLLC
Vienna, VA

FACULTY

CONSTRUCTION PROGRAM

MARY ALICE MCNAMARA

*2VP & Counsel, National Accounts
Travelers Bond & Financial Products
Hunt Valley, MD*

NESTOR MELNYK

*Principal
MSA Architects
Cincinnati, OH*

STEVE NELSON

*EVP, General Counsel
SureTec Insurance Company
Austin, TX*

VICKI NUETZEL

*Office of the General Counsel
San Francisco Bay Area Rapid Transit District
Oakland, CA*

DAVID C. OLSON

*Chair, Fidelity & Surety Law Committee
Frost Brown Todd LLC
Cincinnati, OH*

BEN PATRICK

*Wilson Elser Moskowitz Edelman & Dicker, LLP
Miami, FL*

RYAN PEDRAZA

*Virginia Office of the Attorney General
Richmond, VA*

DALTON F. PHILLIPS

*Senior Assistant General Counsel
General Services Administration
Washington, D.C.*

MIKE F. PIPKIN

*FSLC Committee Chair-Elect and
Program Co-Chair
Sedgwick LLP
Dallas, TX*

STEPHEN M. RAE

*General Counsel
Liberty Mutual Surety
Plymouth Meeting, PA*

JOSEPH RUSSO

*Senior Vice President – Regional Practice Leader
Aon Risk Services – Construction Services Group
New York, NY*

SIMON J. SANTIAGO

*Nossaman LLP
Washington, D.C.*

PHILIP A. SHUCET

*The Philip A. Shucet Company
Norfolk, VA*

JOSEPH SELIGA

*Mayer Brown LLP
Chicago, IL*

LORENCE H. SLUTZKY

*Robbins Schwartz
Chicago, IL*

GUNARS SREIBERS

*Brightwater Project Manager
Wastewater Treatment Division
Washington Department of Natural Resources
and Parks
Woodinville, WA*

MICHAEL J. TIMPANE

*Salamirad Morrow P.C.
San Francisco, CA*

COURTNEY WALKER

*Zurich Surety Credit and Political Risk
Memphis, TN*

TIMOTHY WALKER

*Senior Vice President, Regional Technical Director
Construction Practice
Willis Group
New York, NY*

LAWRENCE (LEE) WAGNER

*Stewart, Sokol & Gray, LLC
Portland, OR*

TIMOTHY A. WATT

*Senior Vice President and General Counsel
Zachry Corporation
San Antonio, TX*

JAMIE ZIEGLER

*Program Co-Chair
Liberty Mutual Surety
Seattle, WA*

AGENDA

CONSTRUCTION PROGRAM

CONSTRUCTION: WHAT WERE THEY THINKING? UNDERSTANDING THE CONSTRUCTION PROJECT FROM THE PUBLIC OWNER'S PERSPECTIVE

THURSDAY, JANUARY 23, 2014

8:15 – 8:30 A.M. **MIDWINTER MEETING WELCOMING REMARKS AND INTRODUCTION TO PROGRAMS**

David C. Olson
*Chair, Fidelity & Surety
Law Committee
Frost Brown Todd LLC
Cincinnati, OH*

Eugene G. Beckham
*Chair, Tort Trial & Insurance
Practice Section
Beckham & Beckham, PA
Miami, FL*

8:30 – 8:35 A.M. **BREAK FOR CONSTRUCTION AND FIDELITY PROGRAM TRANSITION**

8:35 – 8:40 A.M. **CONSTRUCTION PROGRAM WELCOMING REMARKS AND INTRODUCTIONS**

Shannon J. Briglia
*Program Co-Chair
BrigliaMcLaughlin, PLLC
Vienna, VA*

Mike F. Pipkin
*Chair-Elect, Fidelity & Surety Law
Committee and Program Co-Chair
Sedgwick LLP
Dallas, TX*

Jamie Ziegler
*Program Co-Chair
Liberty Mutual Surety
Seattle, WA*

8:40 – 9:40 A.M. **PLENARY I – PROJECT DEVELOPMENT – THE PUBLIC OWNER'S BALANCING OF THE WHO, WHAT, WHEN, WHERE AND WHY AT PROJECT CONCEPTION**

Get an inside look into how public owners:

- Initiate a project development process;
- Employ emerging techniques for organizing stakeholders and creating meaningful project goals and objectives; and
- Select the most appropriate project delivery and risk management systems and develop successful approaches to procurement logistics.

The panel will focus upon identifying innovative methods that encourage collaborative process, and construction industry practitioners will gain insight into how they can engage with public owners and provide value added service to influence positive outcomes.

AGENDA CONSTRUCTION PROGRAM

Stephen M. Rae
(Moderator)
General Counsel
Liberty Mutual Surety
Plymouth Meeting, PA

Jeffrey A. Applebaum
Thompson Hine LLP
Cleveland, OH

Ryan Pedraza
Virginia Office of the Attorney General
Richmond, VA

9:40 – 10:40 A.M.

PLENARY II – THE CONTRACT DOCUMENTS: WHOSE PROJECT IS IT ANYWAY?

What goes through an owner's mind when preparing contract documents for a project? Listen to different owner perspectives on industry standard contract documents, as well as owners' top priorities when drafting a contract. Owner representatives will discuss their view of what default and termination clauses should look like and why, how their contract documents handle an owner's right to perform work, and whether they consider bonding.

Mary Alice McNamara
(Moderator)
2VP & Counsel, National Accounts
Travelers Bond & Financial Products
Hunt Valley, MD

David Bergquist
Chief Counsel
University of California Riverside
Riverside, CA

Boyd Black
Assistant VP, Capital Project Delivery
University of Chicago
Chicago, IL

Simon J. Santiago
Nossaman LLP
Washington, D.C.

Lorence H. Slutzky, Esq.
Robbins Schwartz
Chicago, IL

10:40 – 11:00 A.M.

BREAK

SESSION 1

11:00 – 11:45 A.M.

WORKSHOP A – PROJECT FINANCE: AN IN-DEPTH LOOK AT CHOICES AND LIMITATIONS

This session will focus on the various methods of project finance for large construction projects, including the recent evolution of alternative project delivery models. The panel will provide an overview of the key distinctions between traditional procurement and financing models and public-private partnerships (P3s). The panel will also explain the many varieties of P3s and the criteria that public owners should consider in determining whether a P3 is appropriate for a particular project. The session will include a particular focus on issues concerning payment and performance security in the P3 context, including the use of surety bonds in P3 projects.

Courtney Walker
(Moderator)
Zurich Surety Credit
and Political Risk
Memphis, TN

Roger L. Driskell, PE
Acting Director Office of Innovative Project Delivery
Illinois Department of Transportation
Springfield, IL

Sue Lee
US Infrastructure Advisory Leader
Ernst & Young Infrastructure Advisors
Philadelphia, PA

Joseph Seliga
Mayer Brown LLP
Chicago, IL

AGENDA CONSTRUCTION PROGRAM

continued

11:00 – 11:45 A.M. **WORKSHOP B – WHICH CIP WORKS FOR YOU? AN IN-DEPTH LOOK AT PROJECT INSURANCE AND HOW IT CAN SHAPE A PROJECT**

The Owner Controlled Insurance Policy (OCIP) and Contractor Controlled Insurance Policy (CCIP) are risk management tools used on large construction projects. Commonly called wrap-up policies or “wraps,” both bundle coverages normally found in different types of policies and provide coverage for many different parties. The panel will explore various topics related to project-based insurance policies including the types of risks that they manage, the potential benefits and drawbacks, the different formats of such policies, the appropriateness of specific policy formats for different project types, the feasibility and availability of wrap policies, policy pricing and the administration of project policies. The panel will also talk about insurance markets and trends for wrap policies and provide other practical tips for owners that are considering appropriate types of project insurance.

Lawrence (Lee) Wagner
(Moderator)
Stewart, Sokol & Gray, LLC
Portland, OR

Robert J. Franco
Franco Maroney LLC
Chicago, IL

Ray Lemming
Construction Claims
Administrator
Chicago Metropolitan Water
Reclamation District
Chicago, IL

Joseph Russo
Senior Vice President –
Regional Practice Leader
Aon Risk Services –
Construction Services Group
New York, NY

Timothy Walker
Senior Vice President –
Regional Technical Director
Construction Practice
Willis Group
New York, NY

11:00 – 11:45 A.M. **WORKSHOP C – HOW THE SBA AND DISADVANTAGED BUSINESS PROGRAMS ARE INCORPORATED INTO AND CAN ENHANCE A PUBLIC PROJECT**

In recent years, there has been a substantial increase in the value of contracts let by public entities to Disadvantaged Business Entities (DBEs). That trend is likely to continue for the foreseeable future. The use of DBEs on public projects presents unique challenges, both to the owner and to the surety. This presentation will explore these issues from the point of view of the surety and the owner, and will present and analyze potential solutions for these issues.

Ben Patrick
(Moderator)
Wilson Elser Moskowitz
Edelman & Dicker, LLP
Miami, FL

Mark Hovatter
Chief Facilities Executive
Los Angeles Unified School District
Los Angeles, CA

11:45 A.M. – 1:15 P.M. **LUNCH (ON YOUR OWN)**

1:15 – 1:20 P.M. **INTRODUCTION AND OPENING OF AFTERNOON SESSION**

AGENDA

CONSTRUCTION PROGRAM

continued

1:20 – 2:20 P.M.

PLENARY III – THE CLOCK IS TICKING: POLITICAL AND PERFORMANCE BASED PRESSURES DURING CONTRACT ADMINISTRATION

The primary focus of this session will be the need for public owners to carefully plan projects, with an eye towards minimizing political and performance based pressures during contract administration. The panel will discuss various factors to evaluate during project development, such as the project's complexity, the owner's in-house design and observation capabilities, as well as budgetary and time constraints, and how those considerations affect the remedial options owners may exercise in the event of delays or other problems during construction. The speakers will also address the impact of various bond and contract forms on the choices available to the owner during contract administration. The panel will utilize real life examples and recent case law during the discussion of these issues.

Robert Magrini
(Moderator)
Hayes Magrini & Gatewood
Oklahoma City, OK

Mari Bochanis
Former Project Attorney
Southern Nevada Water Authority
Las Vegas, NV

Nestor Melnyk
Principal
MSA Architects
Cincinnati, OH

Philip A. Shucet
The Philip A. Shucet Company
Norfolk, VA

2:20 – 2:35 P.M.

BREAK

SESSION 2

2:35 – 3:20 P.M.

WORKSHOP D – DISPUTE RESOLUTION AS A MEANS OF AVERTING DISASTER

This workshop has a robust panel featuring representatives of two large public entities, two experienced ADR practitioners with surety backgrounds, and a representative of a nationally prominent public works construction firm. It will explore the sources and timing of disputes on public projects, adding the unique perspective of the public owner representatives to this discussion. The panel will then address how parties can use ADR to potentially avert two types of disasters: Project Disaster (a prominent project going over time and budget) and Litigation Disaster (spending more on the dispute than it is worth). The speakers will discuss contractual mechanisms between the parties themselves, facilitated processes conducted in real time such as Dispute Review Boards and Project Neutrals, and the post-completion ADR processes (mediation and arbitration), focusing on the perspectives of the public entity representatives as to the utility of ADR in all these contexts.

Michael J. Timpane
(Moderator)
Salamirad Morrow P.C.
San Francisco, CA

Emilio Cruz
Assistant General Manager,
Infrastructure
San Francisco Water Power Sewer
San Francisco, CA

Rudy Malfabon
Director
Nevada Department of
Transportation
Carson City, NV

Steve Nelson
EVP, General Counsel
SureTec Insurance Company
Austin, TX

AGENDA CONSTRUCTION PROGRAM

continued

Timothy A. Watt
*Senior Vice President
and General Counsel*
Zachry Corporation
San Antonio, TX

2:35 – 3:20 P.M.

WORKSHOP E – THE OWNER’S EVALUATION OF ITS OPTIONS DURING PERFORMANCE

Because the surety and owner become inextricably linked following a default, it is critical for surety professionals, contractors, and attorneys to gain a better understanding of how owners manage their contractors’ performance. This dynamic workshop will first provide useful insight on how owners evaluate contract performance during a project. Next, the panel will explore the factors owners consider in assessing its pre-default and post-default options. The workshop will also include a mini-case study on a high profile project where the surety avoided major losses, in part due to the owner’s election of certain options, and recent cases where the court endorsed the owners’ actions in performance bond disputes.

Lauren P. McLaughlin
(Moderator)
BrigliaMcLaughlin, PLLC
Vienna, VA

Kurt L. Dettman
Constructive Dispute Resolutions
Hingham, MA

Vicki R. Nuetzel
Office of the General Counsel
San Francisco Bay Area
Rapid Transit District
Oakland, CA

2:35 – 3:20 P.M.

WORKSHOP F – CLOSE-OUT WORKSHOP – OWNER’S EXPECTATIONS

“We shall neither fail nor falter; we shall not weaken or tire . . . give us the tools and we will finish the job.” – Winston Churchill

Acceptance. Final Payment. Ribbon Cutting. If it was only that easy. Closing out a public project – the process of *finishing* the job – is a complex and treacherous period for public works projects that inevitably catch both owners and contractors alike in unintended and costly traps. By effectively managing and navigating the close-out process, traps disappear, expectations are met, and the parties maintain good relations for the next venture. In this engaging presentation by public owner and contractor practitioners you will learn pivotal close-out issues and procedures from the public owner’s perspective that will provide essential tools for best practices in public contracting.

James Diwik
(Moderator)
Sedgwick LLP
San Francisco, CA

Catherine Crow
*Team Leader for Real
Property Litigation*
General Services
Administration
Washington, D.C.

Dalton F. Phillips
Senior Assistant General Counsel
General Services Administration
Washington, D.C.

Gunars Sreibers
Brightwater Project Manager,
Wastewater Treatment Division
Washington Department of
Natural Resources and Parks
Woodinville, WA

AGENDA CONSTRUCTION PROGRAM

continued

3:20 – 3:35 P.M.

BREAK

3:35 – 4:35 P.M.

PLENARY IV – PROJECT ETHICS – A SURETY PROFESSIONAL'S PRIMER ON THE ETHICAL RULES THAT GOVERN GOVERNMENT LAWYERS

Do you know that there are a specific and unique set of ethical rules and obligations that apply to the government attorneys who represent your public bond owners/obligees? All the while that we, as surety professionals, are interacting, negotiating and resolving matters with counsel for our public owners/obligees, there are unique rules operating in the background that guide such counsel's actions, negotiating positions, and ultimately the success or failure of resolutions and outcomes on public projects. This panel will seek to give the professional surety audience a heightened awareness and better understanding of the rules that govern public attorneys, and the impact that these rules may have on our interactions with our government counsel, so that we can use our knowledge to negotiate more effectively and reach better resolutions with public owners. The panel will address questions such as: Who is the governmental client? To whom are ethical obligations, such as confidentiality and zealous advocacy, actually owed and how do those obligations intersect with public freedom of information rules? And critically, what is the governmental revolving door, and what effect does it have on our interactions with government counsel?

Lynn R. Axelroth
Ballard Spahr LLP
Philadelphia, PA

Benjamin D. Lentz
*Torre, Lentz, Gamell,
Gary & Rittmaster, LLP*
Jericho, NY

5:00 – 6:00 P.M.

SPEAKERS AND NEW MEMBERS COCKTAIL RECEPTION

(Only Program Speakers, New Committee Members, Members of Young Professionals Committee and FSLC Leadership are invited to attend)

6:00 – 7:00 P.M.

FSLC WELCOME RECEPTION

All registered attendees are welcome to attend for free, guests and others may purchase tickets in advance for \$75.00 (\$80.00 at the door)

FACULTY FIDELITY PROGRAM

FIDELITY: EXPANSION AND CONTRACTION: ADDING TO AND SUBTRACTING FROM THE STANDARD BOND

GEORGE ALLPORT

Chubb
Warren, NJ

SAMUEL J. ARENA, JR.

Sradley, Ronon, Stevens & Young, LLP
Philadelphia, PA

ASHLEY BELLEAU

Montgomery Barnett LLP
New Orleans, LA

MICHAEL BERANEK

W.R. Berkley
Little Rock, AR

CHRISTIE BIRD

*Frenkel Lambert Weiss Weisman &
Gordon LLP*
New York, NY

LISA BLOCK

CNA
Cranbury, NJ

MICHAEL BRANLEY

The Hartford
Hartford, CT

PHILIP L. BRUNER

JAMS
Minneapolis, MN

CARLETON R. BURCH

*Anderson, McPharlin &
Conners LLP*
Los Angeles, CA

CHARCRETIA DIBARTOLO

Hinsbaw & Culbertson LLP
Boston, MA

DAVID T. DIBIASE

*Anderson, McPharlin &
Conners LLP*
Los Angeles, CA

ROBERT DUKE

*The Surety & Fidelity
Association of America*
Washington, D.C.

BRIAN FALCON

Frost Brown Todd LLC
Indianapolis, IN

MATT FARLEY

Krebs, Farley & Pelletieri
New Orleans, LA

ADAM FRIEDMAN

Wolff & Samson PC
New York, NY

ANN GARDINER

Program Co-Chair
ABA Insurance Services, Inc.
Mayfield Heights, OH

KEVIN GILLETTE

Marsh USA
New York, NY

CARL GRANT

AIG
New York, NY

MARK JOHNSON

*Gregerson Rosow Johnson
& Nilan Ltd.*
Minneapolis, MN

STEPHEN LEGGETT

Finex North America
New York, NY

RICHARD S. MILLS

*McElroy, Deutsch, Mulvaney &
Carpenter, LLP*
New York, NY

RONALD MUND

Travelers
Naperville, IL

ROBERT OLAUSEN

*ISO Insurance Programs and
Analytic Services*
Jersey City, NJ

DAVID C. OLSON

*Chair, Fidelity & Surety Law
Committee*
Frost Brown Todd LLC
Cincinnati, OH

BRIAN O'NEILL

AIG
New York, NY

MAURA PELLETIERI

Krebs, Farley & Pelletieri
New Orleans, LA

CAROL A. PISANO

*McElroy, Deutsch, Mulvaney
& Carpenter, LLP*
New York, NY

SAM POTEET

Manier & Herod
Nashville, TN

PATRICIA RICCIUTI

The Hartford
Hartford, CT

JOHN RIDDLE

Strasburger & Price
Dallas, TX

DANIEL J. RYAN

One Beacon Insurance Company
Minnetonka, MN

LYNN M. SCHUBERT

*The Surety & Fidelity Association
of America*
Washington, D.C.

TONI SCOTT REED

Strasburger & Price
Dallas, TX

JOSEPH SCULLY

*Financial Guaranty Insurance
Brokers, Inc.*
Pasadena, CA

LEE SIEGEL

The Hartford
Hartford, CT

SUSAN SULLIVAN

Sedgwick LLP
Los Angeles, CA

PATRICIA THOMPSON

Carlton Fields PA
Miami, FL

GARY VALERIANO

Program Co-Chair
*Anderson, McPharlin &
Conners LLP*
Los Angeles, CA

JUSTIN WEAR

Manier & Herod
Nashville, TN

MICHAEL WEBER

Leo & Weber PC
Chicago, IL

AGENDA

FIDELITY PROGRAM

FIDELITY: EXPANSION AND CONTRACTION: ADDING TO AND SUBTRACTING FROM THE STANDARD BOND

THURSDAY, JANUARY 23, 2014

8:15 – 8:30 A.M. **MIDWINTER MEETING WELCOMING REMARKS AND
INTRODUCTION TO PROGRAMS**

David C. Olson
*Chair, Fidelity &
Surety Law Committee*
Frost Brown Todd LLC
Cincinnati, OH

Eugene G. Beckham
*Chair, Tort Trial &
Insurance Practice Section*
Beckham & Beckham, PA
Miami, FL

8:30 – 8:35 A.M. **BREAK FOR CONSTRUCTION AND FIDELITY PROGRAM
TRANSITION**

8:35 – 8:45 A.M. **INTRODUCTION OF FIDELITY PROGRAM**

Gary Valeriano
Program Co-Chair
*Anderson, McPharlin
& Conners LLP*
Los Angeles, CA

Ann Gardiner
Program Co-Chair
ABA Insurance Services, Inc.
Mayfield Heights, OH

8:45 – 9:30 A.M. **THE BROKER'S APPROACH**

How does a broker prepare for policy negotiations on a financial institution bond or crime policy? This panel will focus on the various methods utilized by brokers in assessing the needs of their clients, the tenor of the marketplace and the impact of relationships they have cultivated with various underwriters and companies. This will be a program of interest for anyone who has wondered how policies are purchased, negotiated and finalized.

Lynn M. Schubert
(Moderator)
*The Surety & Fidelity
Association of America*
Washington, D.C.

David T. DiBiase
(Moderator)
*Anderson, McPharlin
& Conners LLP*
Los Angeles, CA

Kevin Gillette
Marsh USA
New York, NY

Stephen Leggett
Finex North America
New York, NY

Joseph Scully
*Financial Guaranty
Insurance Brokers, Inc.*
Pasadena, CA

AGENDA

FIDELITY PROGRAM

continued

9:30 – 10:15 A.M. THE UNDERWRITER'S APPROACH

This panel will look at the negotiation of financial institution bonds and crime policies from the company's perspective. What do underwriters consider when contemplating changes to the standard bond forms? What impact do the market conditions, relationships with parties and risk assessment have with respect to how the underwriter makes their decision on what the final product will look like.

Robert Duke
(Moderator)
The Surety & Fidelity
Association of America
Washington, D.C.

Patricia Thompson
(Moderator)
Carlton Fields PA
Miami, FL

Lisa Block
CNA
Cranbury, NJ

George Allport
Chubb
Warren, NJ

Brian O'Neill
AIG
New York, NY

Michael Beranek
W.R. Berkley
Little Rock, AR

10:15 – 10:30 A.M. BREAK

10:30 – 11:00 A.M. EXPANDING AND CONTRACTING THE EMPLOYEE DISHONESTY PROVISION

This presentation will focus on how changes to the key coverages under any fidelity bond impact claims handling and analysis. These areas of coverage have become a frequent focus of negotiation in recent years and this presentation will deal with alterations to employee dishonesty provisions, the addition of employee theft coverage and other changes made to the standard coverage.

CharCretia DiBartolo
Hinshaw & Culbertson LLP
Boston, MA

Lee Siegel
The Hartford
Hartford, CT

11:00 – 11:30 A.M. THE COMPUTER CRIME ENDORSEMENT

Two seasoned professionals discuss this most common endorsement to fidelity policies. With the ever expanding use of computers in all areas of life and business, this presentation will focus on how this former endorsement, now a standard provision in some bonds, has been treated by insureds and the courts to date and its possible impact into the future. The rise in computer-related claims makes this presentation a must for all fidelity practitioners.

Justin Wear
Manier & Herod
Nashville, TN

Carl Grant
AIG
New York, NY

AGENDA

FIDELITY PROGRAM

11:30 A.M. – 12:00 P.M. CONTRACTUAL CONSTRUCTION AND ENDORSEMENTS

The addition of various endorsements adds a wrinkle to a court's handling and interpretation of various policy provisions. Different courts have differing views on how those modifications should be handled with respect to contractual construction. This presentation will deal with the impact of endorsements on the construction of coverages, conditions and exclusions under the standard forms.

Carol A. Pisano

*McElroy, Deutsch, Mulvaney
& Carpenter, LLP*
New York, NY

Michael Branley

The Hartford
Hartford, CT

Richard S. Mills

*McElroy, Deutsch, Mulvaney
& Carpenter, LLP*
New York, NY

12:00 – 1:30 P.M. LUNCH (ON YOUR OWN)

1:30 – 2:15 P.M.

WHAT'S NEXT IN FIDELITY UNDERWRITING

This panel will look at how endorsements and/or other changes to the policies are ultimately woven into what becomes the standard policy and what we can expect future standard policies to look like. So many of the past endorsements have become a standard part of the bond, this promises to be a peek at the future of bond forms.

Samuel J. Arena, Jr.

(Moderator)
*Stradley, Ronon, Stevens
& Young, LLP*
Philadelphia, PA

Michael Beranek

W.R. Berkley
Little Rock, AR

Joseph Scully

*Financial Guaranty
Insurance Brokers, Inc.*
Pasadena, CA

George Allport

Chubb
Warren, NJ

Stephen Leggett

Finex North America
New York, NY

2:15 – 3:00 P.M.

EXPANDING AND CONTRACTING OTHER PROVISIONS OF THE STANDARD FORM

This presentation will deal with alterations made to standard coverage limitations, conditions and exclusions. It is not just insuring agreements that are subject to change by endorsement. The focus here will be on changes to key form provisions such as discovery of loss, knowledge of prior dishonesty, the definition of insured and other common endorsements.

Mark Johnson

*Gregerson Rosow Johnson
& Nilan Ltd.*
Minneapolis, MN

Daniel J. Ryan

One Beacon Insurance Company
Minnetonka, MN

AGENDA

FIDELITY PROGRAM

continued

3:00 – 3:15 P.M. **BREAK**

3:15 – 3:30 P.M. **ENDORSEMENTS RELATED TO FINANCIAL BROKERS**

Certain specific endorsements are offered to the financial products community and this presentation will highlight issues related to those offerings. Recent economic issues have increased the scrutiny placed on the brokerage community. This has resulted in an increase in litigation and this presentation will be of interest to all.

Susan Sullivan
Sedgwick LLP
Los Angeles, CA

3:30 – 3:45 P.M. **ENDORSEMENTS RELATED TO TITLE AND ESCROW AGENTS**

Title and escrow officers often deal with millions of dollars on a daily basis. The real estate market the past few years has been challenging on the title and escrow business. This presentation looks at how the endorsements related to this area of our economy have fared and what can be expected in the future.

Ashley Belleau
Montgomery Barnett LLP
New Orleans, LA

3:45 – 4:00 P.M. **ENDORSEMENTS RELATED TO 1031 EXCHANGE COMPANIES**

A number of 1031 exchange companies have had funding problems in recent times. Claims arising out of this segment of the financial community demonstrate the need for predictive risk assessment. This presentation will focus on the endorsements related to a 1031 exchange company and how those have fared with respect to claims in the courts.

Brian Falcon
Frost Brown Todd LLC
Indianapolis, IN

4:00 – 4:15 P.M. **ENDORSEMENTS RELATED TO ERISA AND PENSION PLANS**

Protecting employee retirement monies is an area ripe for bond coverage. Among the most common of endorsements are those related to employee retirement plans and other employment related benefits. This presentation will look at how courts have treated the various coverages.

Michael Weber
Leo & Weber PC
Chicago, IL

Patricia Ricciuti
The Hartford
Hartford, CT

AGENDA

FIDELITY PROGRAM

4:15 – 4:45 P.M.

ENDORSEMENTS RELATED TO PUBLIC OFFICIALS AND FAITHFUL PERFORMANCE

As government expands and public employees take on additional responsibility the risks associated with money they hold increase. This presenter will look at the various form changes made with respect to public employees and/or a “faithful performance” endorsement. This is a unique area which deserves special attention.

Carleton R. Burch

Anderson, McPharlin & Connors LLP
Los Angeles, CA

4:45 – 5:00 P.M.

ENDORSEMENTS RELATED TO FUNDS TRANSFERS

The use of checks is likely to continue to decrease as more and more transactions take place on-line. With the public’s utilization of checks diminishing more each year, most transactions are now handled by electronic transfer. This is an area of increasing concern respecting the security of financial information and this presentation will look at how endorsements have tried to deal with the growing complexity.

Christie Bird

Frenkel Lambert Weiss Weisman & Gordon LLP
New York, NY

FRIDAY, JANUARY 24, 2014

8:00 – 8:15 A.M.

WELCOME REMARKS AND PROGRAM OUTLINE

David C. Olson

Chair, Fidelity & Surety Law Committee
Frost Brown Todd LLC
Cincinnati, OH

8:15 – 8:30 A.M.

TRANSITION TO FIDELITY MOCK TRIAL PROGRAM

8:30 – 8:45 A.M.

OUTLINE OF MOCK TRIAL

The morning session of the Program will present a factual hypothetical based upon an alleged computer crime theft. A group of attorneys representing both the insured and the insurer will present and argue their case to an actual impartial jury assembled for the presentation. The final portion of the program will allow live viewing of actual jury deliberation on the issue of coverage under the Computer Crime Endorsement.

Gary Valeriano

Program Co-Chair
Anderson, McPharlin
& Connors LLP
Los Angeles, CA

Ann Gardiner

Program Co-Chair
ABA Insurance Services, Inc.
Mayfield Heights, OH

Counsel:

Maura Pelletieri and Matt Farley

Krebs, Farley & Pelletieri
New Orleans, LA

Toni Scott Reed and

John Riddle
Strasburger & Price
Dallas, TX

AGENDA

FIDELITY PROGRAM

continued

Witnesses:

Adam Friedman
Wolff & Samson PC
New York, NY

Sam Poteet
Manier & Herod
Nashville, TN

Ronald Mund
Travelers
Naperville, IL

Judge:

Philip L. Bruner
JAMS
Minneapolis, MN

- 8:45 – 10:15 A.M. **OPENING STATEMENTS, DIRECT EXAMINATION AND CROSS-EXAMINATION OF WITNESSES, CLOSING ARGUMENTS AND JURY CHARGE**
- 10:15 – 10:30 A.M. **BREAK**
- 10:30 – 11:45 A.M. **JURY DELIBERATIONS AND JURY INTERVIEW**
- 11:45 A.M. – 12:00 P.M. **CLOSING REMARKS**

FACULTY SURETY PROGRAM

SURETYSHIP: FUNDAMENTAL RIGHTS OF SURETYSHIP – REVIEW OF INDEMNITY AND THE OPTIONS AVAILABLE TO THE SURETY

SCOTT ADAMS

*Avalon Risk, LLC and
Lighthouse Management Services*
Cedar Knolls, NJ

TODD M. BAUER

Guardian Group, Inc.
Torrence, CA

THEODORE BAUM

Goldberg Segalla, LLP
Rochester, NY

JONATHAN BONDY

Wolff & Samson, PC
West Orange, NJ

JERRY CAROZZA

*Selective Insurance
Company of America*
Branchville, NJ

ELLEN M. CAVALLARO

Berkeley Surety Group
Morristown, NJ

DENNIS C. CAVANAUGH

Robinson & Cole, LLP
Hartford, CT

BOGDA M.B. CLARKE

Hanover Insurance Group
Somerset, NJ

GRACE WINKLER CRANLEY

Leo & Weber, PC
Chicago, IL

ANDREW T. ENGLEHART

Construction Process Solutions, Ltd
Cincinnati, OH

JOHN F. FATINO

*Program Co-Chair
Whitfield & Eddy, PLC*
Des Moines, IA

KURT C. FAUX

Faux Law Group
Henderson, NV

RUSSELL FULLER

*ICW Group and On Point Risk
Solutions, Inc.*
San Diego, CA

DREW J. GENTSCH

Whitfield & Eddy, PLC
Des Moines, IA

TRACEY HALEY

*Zurich American Insurance
Company*
Dallas, TX

BRETT E. HARMAN

*Director of Security Business
Development
J.E.P. Capital*
Des Moines, IA

LINDA LEON HOFFMAN

*Employers Mutual Casualty
Company*
Des Moines, IA

MATTHEW M. HOROWITZ

Wolf, Horowitz & Etlinger, LLC
Hartford, CT

JOHN J. IMMORDINO

*Wilson Elser Moskowitz Edelman
& Dicker LLP*
Los Angeles, CA

PETER E. KARNEY

*Program Co-Chair
North American Specialty
Insurance Co. and Washington
International Insurance Co.*
Schaumburg, IL

RALPH J. KOOY

Tresler LLP
Chicago, IL

WAYNE D. LAMBERT

Cashin, Spinelli & Ferretti, LLC
Farmington, CT

JAY M. MANN

Jennings, Strouss & Salmon, PLC
Phoenix, AZ

JIM MCMAHON

*Senior Vice President – Bond
Manager
Gen Re, A Berkshire Hathaway Co.*
Stamford, CT

GRETA A. MCMORRIS

Levy Craig Law Firm
Kansas City, MO

DAVID C. OLSON

*Chair, Fidelity & Surety Law
Committee
Frost Brown Todd LLC*
Cincinnati, OH

DANIEL PENTECOST

Westfield Group
Westfield, OH

CYNTHIA RODGERS- WAIRE

*Program Co-Chair
Wright Constable & Skeen, LLP*
Baltimore, MD

ROGER P. SAUER

*Schlemlein Goetz Fick &
Scruggs, PLLC*
Seattle, WA

FRED SCHWAIT

*Chief Underwriting Officer
South Central Territory Travelers
Bond and Financial Products*
Philadelphia, PA

MATTHEW L. SILVERSTEIN

*International Fidelity Insurance
Company*
Hunt Valley, MD

MICHAEL A. STOVER

Wright, Constable & Skeen, LLP
Baltimore, MD

AGENDA

SURETY PROGRAM

SURETYSHIP: FUNDAMENTAL RIGHTS OF SURETYSHIP – REVIEW OF INDEMNITY AND THE OPTIONS AVAILABLE TO THE SURETY

FRIDAY, JANUARY 24, 2014

8:00 – 8:15 A.M.

WELCOME REMARKS AND PROGRAM OUTLINE

David C. Olson
*Chair, Fidelity & Surety Law
Committee*
Frost Brown Todd LLC
Cincinnati, OH

John F. Fatino
Program Co-Chair
Whitfield & Eddy, PLC
Des Moines, IA

Peter E. Karney
Program Co-Chair
*North American Specialty Ins.
Co. and Washington International
Ins. Co.*
Schaumburg, IL

Cynthia Rodgers-Waire
Program Co-Chair
Wright Constable & Skeen, LLP
Baltimore, MD

8:15 – 8:45 A.M.

FUNDAMENTAL RIGHT OF SURETIES – HISTORIC BASIS FOR INDEMNITY AT COMMON-LAW AND CREATION OF THE RIGHT OF INDEMNITY

This presentation will explore the historical background for the surety's rights and remedies under the indemnity agreement. It will be shown that the surety's common law and statutory indemnity rights are complimentary to, and serve as the foundation for, the operative provisions of the indemnity agreement. Further, the indemnity agreement will be examined as to creation, parameters and termination of the surety relationship between the surety, principal and indemnitors.

Linda Leon Hoffmann
Employers Mutual Casualty Co.
Des Moines, IA

Jay M. Mann
*Jennings, Strouss &
Salmon, PLC*
Phoenix, AZ

8:45 – 9:30 A.M.

DOCUMENTING THE INDEMNITY OBLIGATION AND THE ESSENTIAL ELEMENTS

In the course of the underwriting process, a surety may seek to supplement the protections afforded by the indemnity agreement through other agreements between the principal and surety, such as agreements that require the principal to post collateral as a requirement for the issuance of surety credit. This panel will discuss agreements that afford protections to the surety in addition to those afforded by the standard indemnity agreement, including a discussion of drafting suggestions, issues, and problems that may arise between the surety and principal as a result of implementing these added requirements. This panel will also discuss critical issues that may arise in

AGENDA

SURETY PROGRAM

continued

determining the extent of the indemnity obligation imposed under the general indemnity agreement, including to what extent the surety is entitled to recover for its costs and attorneys fees where the surety has retained its own counsel notwithstanding that the principal offers to provide a defense and whether the surety can recover for its losses, fees, and costs incurred as a result of defending bad faith claims.

Scott Adams
Avalon Risk, LLC and
Lighthouse Management Services
Cedar Knolls, NJ

Matthew M. Horowitz
Wolf, Horowitz & Etlinger, LLC
Hartford, CT

Wayne D. Lambert
Cashin, Spinelli & Ferretti, LLC
Farmington, CT

Daniel Pentecost
Westfield Group
Westfield, OH

9:30 – 10:15 A.M.

ENFORCEMENT OF THE SURETY'S INDEMNITY RIGHTS, PART 1 – CHOOSE YOUR WEAPON

This segment will address practice tip ideas for pre-litigation steps which a surety claims representative, its outside counsel, and consultant may consider when an account goes into claim, utilizing the information gleaned from “non-traditional” sources, including that found in the underwriting file, to the surety’s best advantage and protecting the surety’s position with respect to potential collateral.

Theodore Baum
Goldberg Segalla, LLP
Rochester, NY

Jerry Carozza
Selective Insurance
Co. of America
Branchville, NJ

Andrew T. Englehart
Construction Process
Solutions, Ltd
Cincinnati, OH

10:15 – 10:30 A.M.

BREAK

10:30 – 11:15 A.M.

ENFORCEMENT OF THE SURETY'S INDEMNITY RIGHTS, PART 2 – IMPLEMENTATION OF THE VARIOUS OPTIONS (LITIGATION)

All too often the principal and indemnitors do not respond to the surety’s demand for reimbursement of a bond loss nor post collateral to cover a potential loss. A suit will need to be filed and prosecuted. This session discusses the process of enforcing a general indemnity agreement from pre-suit investigation, demand and other first steps through collection of settlement or judgment. The complaint, jurisdiction, venue, service, motion practice, trial and other procedural considerations will be discussed. Methods and opportunities to enforce collateral demands will be covered in depth.

Ellen M. Cavallaro
Berkley Surety Group
Morristown, NJ

Kurt C. Faux
Faux Law Group
Henderson, NV

Ralph J. Kooy
Tressler LLP
Chicago, IL

AGENDA

SURETY PROGRAM

continued

11:15 A.M. – 12:00 P.M. **ROLE OF INDEMNITY IN UNDERWRITING THE SURETY RISK**

A panel of surety underwriters discuss indemnity options and variations used in the underwriting process when markets are “tight” or “loose.”

Peter E. Karney
(Moderator)
North American Specialty
Insurance Co. and Washington
International
Schaumburg, IL

Brett E. Harman
Director of Surety Business
Development
J.E.P. Capital
Des Moines, IA

Jim McMahon
Sr. VP – Bond Manager
Gen Re, A Berkshire Hathaway
Company
Stamford, CT

Fred Schwait
Chief Underwriting Officer,
South Central Territory
Travelers Bond and Financial
Products
Philadelphia, PA

12:00 – 1:30 P.M. **LUNCH (ON YOUR OWN)**

1:30 – 1:35 P.M. **INTRODUCTION AND OPENING FOR AFTERNOON SESSION**

1:35 – 2:15 P.M. **USE OF POWER GRANTED THE SURETY IN THE INDEMNITY AGREEMENT REGARDING CLAIMS AND IMPACT ON SURETY'S COLLECTION EFFORTS**

The purpose of the indemnity agreement is to provide the surety with a contractual right of recovery against any losses, security for any claims and assistance in a surety's investigation and handling of bond claims. Typically, indemnity is a contractual manifestation of the surety's superior status as to the principal, obligee, and claimants, that provides the surety with additional rights to offset liability. In the event of a claim, provisions contained in the indemnity agreement must be considered when evaluating the surety's rights, defenses, obligations, and remedies. This panel will address current issues faced by the surety in its exercise of the powers and options in handling bond claims and pursuing recovery of and security against losses under the indemnity agreement, including what to do when a loss, and thus claim for indemnity, appear to be imminent. Included will be some practical tips for utilizing the indemnity agreement in claims resolution, and avoiding unenforceable contract terms, as well as volunteer and failure to mitigate arguments.

Todd M. Bauer
Guardian Group, Inc.
Torrence, CA

Dennis C. Cavanaugh
Robinson & Cole, LLP
Hartford, CT

John J. Immordino
Wilson Elser Moskowitz
Edelman & Dicker LLP
Los Angeles, CA

2:15 – 3:00 P.M. **DEFENSES AVAILABLE TO PRINCIPAL AND INDEMNITORS**

There are few successful defenses to a surety's indemnity claim under an indemnity agreement. However, there are several defenses that are most frequently utilized to guard against. Knowing how the defenses have been raised may lead to better strategies to challenge the use of the defenses in order to achieve a successful judgment in favor of the surety.

AGENDA

SURETY PROGRAM

continued

Bogda M.B. Clarke
Hanover Insurance Group
Somerset, NJ

Drew J. Gentsch
Whitfield & Eddy, PLC
Des Moines, IA

Roger P. Sauer
*Schlemlein Goetz Fick
& Scruggs, PLLC*
Seattle, WA

3:00 – 3:15 P.M.

BREAK

3:15 – 4:00 P.M.

INDEMNITY AGREEMENT IN BANKRUPTCY

This section will focus on the treatment of a surety's indemnity agreement in the bankruptcy of an indemnitor. Specifically the mechanics of protecting a surety's rights through filing proofs of claims and the basis for making a claim that a debt is not dischargeable. It will also focus on a surety's subrogation rights, use or restrictions of bonded contract funds, the surety's takeover rights, post-petition financing, and a surety's right to cancel, decline or not renew a bond in bankruptcy.

Grace Winkler Cranley
Leo & Weber, PC
Chicago, IL

Tracey Haley
*Zurich American
Insurance Co.*
Dallas, TX

Greta A. McMorris
Levy Craig Law Firm
Kansas City, MO

4:00 – 4:30 P.M.

ETHICS: JOINT REPRESENTATION OF THE SURETY AND THE PRINCIPAL

This distinguished panel will discuss the ethical issues involved in joint representation of the surety and principal from the perspective of both outside counsel and in-house counsel. Among other issues the panel will address: ethical considerations in deciding whether to tender or not to tender, who tendered counsel represents, tendered counsel's ethical duty of diligent representation and confidentiality of communications, ethical concerns when the principal fails to pay counsel or fails to provide collateral and ethical concerns when the surety and principal disagree as to how the case should be handled and/or settled. Finally, the panel will address issues regarding joint defense agreements, including conflicts when counsel becomes adverse to a former co-party to a joint defense agreement and ethical concerns when the surety and principal take inconsistent positions.

Jonathan Bondy
Wolff & Samson, PC
West Orange, NJ

Russell Fuller
*ICW Group and On
Point Risk Solutions, Inc.*
San Diego, CA

Matthew L. Silverstein
*International Fidelity
Insurance Co.*
Hunt Valley, MD

Michael A. Stover
*Wright, Constable &
Skeen, LLP*
Baltimore, MD

GENERAL INFORMATION

REGISTRATION DEADLINE: January 3, 2014

HOTEL DEADLINE: December 30, 2013

ADVANCE REGISTRATION

All registration reservations must be accompanied by credit card, check, money order, or purchase order. A registration form is included in this brochure as well as online at http://www.americanbar.org/groups/tort_trial_insurance_practice.html. The registration fee includes admission to the program, course materials, continental breakfast, breaks, and receptions. If you wish to have your name appear on the pre-registration list distributed at the program, your registration form must be received no later than January 4, 2013. Registration reservations will be confirmed via e-mail within 10 business days.

CANCELLATION POLICY

No registration fee refunds will be granted for cancellations received after **January 3, 2014**. In order to receive a refund (less a \$100 administrative fee), the ABA must receive written notice of cancellation by **January 3, 2014**. Registrants who are unable to attend may send a substitute or will receive course materials in lieu of a refund. Cancellations may be faxed to 312/988-6230, Attn: Felisha A. Stewart.

AIRLINE INFORMATION

Discounted airfares are available from ABA Orbitz for Business including ABA negotiated discounts on American, United, Delta and Virgin America Airlines. To book online go to www.americanbar.org/travel >click under the Orbitz for Business logo at the top of the page >click on the appropriate link in the Self Paid Travel box. For assistance with online or offline reservations call toll free 1 (877) 222-4185.

Following is the ABA discount code for American and United Airlines 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 Code A8913TT
- UNITED AIRLINES (800) 426-1122 Agreement Code 461920 Z Code ZR45. Discount available at www.united.com. Online discount code ZR45461920
- DELTA AIRLINES (800) 328-1111 Domestic Code NMFUD, International Code NMGGY. Discount available at www.delta.com. Online meeting code: NMFUD
- VIRGIN AIRLINES www.virginamerica.com Promo Code VXABA312

HOTEL INFORMATION

A limited number of rooms have been blocked for program registrants at the Waldorf-Astoria Hotel, 301 Park Avenue, New York, NY 10022. Hotel reservations can be made by calling 1-877/476-8792, the room block will be held until exhausted or until **December 30, 2013**, after that date, reservations will be confirmed based on availability. To receive our special group rate of \$289.00 single/double, identify yourself as attending the ABA Tort Trial & Insurance Practice Section FSLC Annual CLE Mid-Winter Meeting. All rooms are subject to a 14.75% state tax and \$3.50 per night occupancy tax. Hotel check-in is 3:00 p.m. and check-out is 12:00 noon, all reservations must be guaranteed

by credit card or deposit check. The room reservations must be cancelled 48 hours prior to the scheduled day of arrival in order to avoid a one-night cancellation charge.

CE CREDIT

Need Continuing Education (CE) Credits? Look no further! These programs may be available for Continuing Education in your state. Please contact Teresa Crothers at tcrothers@sdccpa.com or 630/820-5770 after January 3, 2014 for more information.

CLE CREDIT

ABA programs ordinarily receive CLE credit in AK, AL, AR, AZ, CA, CO, DE, FL, GA, GU, HI, IA, ID, IL, IN, KS, KY, LA, ME, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, VI, WA, WI, WV, and WY. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 5.50 CLE credit hours for the Construction Program, 7.25 CLE credit hours for the Fidelity Program and 6.17 CLE credit hours for the Surety Program in 60-minute-hour states, and 6.60 CLE credit hours for the Construction Program, 8.70 CLE credit hours for the Fidelity Program and 7.40 CLE credit hours for the Surety Program in 50-minute-hour states. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit http://www.americanbar.org/groups/tort_trial_insurance_practice.html or contact Donald Quarles at Donald.quarles@americanbar.org or at 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 http://www.americanbar.org/groups/tort_trial_insurance_practice/membership.html or call 1-800/285-2221. 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! Moreover, if you are a surety or fidelity company employee and join the TIPS and FSLC, either as an attorney member or associate member, your attendance at the various FSLC programs will be free of charge. Join the Tort Trial & Insurance Practice Section today!

PERSONS WITH DISABILITIES

Services for persons with disabilities are available. If special arrangements are required for an individual to attend this program, please submit your request in writing to Felisha Stewart, American Bar Association, 321 N. Clark St., Chicago, IL 60654, or fax to 312/988-6230, no later than **January 4, 2014**.

GET CONNECTED WITH TIPS

Information on this and other TIPS CLE programs is available online at http://www.americanbar.org/groups/tort_trial_insurance_practice/membership.html. Visit us and get connected!

GENERAL INFORMATION

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. To request an application or receive additional information, visit http://www.americanbar.org/groups/tort_trial_insurance_practice_about_us/scholarship_fund.html or contact Linda Wiley at 312/988-5673.

ON-SITE MEETING REGISTRATION AND EXHIBITS

Registration: Wednesday, Jan. 22, 2014 – 10:00 a.m. – 6:00 p.m.
 Thursday, Jan. 23, 2014 – 7:30 a.m. – 5:00 p.m.
 Friday, Jan. 24, 2014 – 7:00 a.m. – 4:30 p.m.

Exhibits: Thursday, Jan. 23, 2014 – 7:30 a.m. – 5:00 p.m.
 Friday, Jan. 24, 2014 – 7:00 a.m. – 3:00 p.m.

EXHIBITORS

For Companies or Vendors interested in exhibiting at this program, contact Mary Ann Peter at 312/988-6155.

WELCOME RECEPTION

The Committee will hold its annual Welcome Reception on Thursday, January 23, 2014 from 6:00 p.m. – 7:00 p.m. Registrants may attend for free, while guests and others may purchase tickets in advance for \$75.00 (\$80.00 at the door).

REGISTRATION

ABA TORT TRIAL & INSURANCE PRACTICE SECTION (TIPS), THE FIDELITY AND SURETY LAW COMMITTEE 2014 MID-WINTER PROGRAM

JANUARY 23-24, 2014 - THE WALDORF~ASTORIA HOTEL

THREE WAYS TO REGISTER

1. ONLINE: www.americanbar.org/tips/groups/tort_trial_insurance_practice.html
2. MAIL: ABA Tort Trial & Insurance Practice Section (TIPS), The Fidelity And Surety Law Committee 2014 Mid-Winter Program: Construction: What Were They Thinking? Understanding the Construction Project from the Public Owner’s Perspective; Fidelity: Expansion and Contraction: Adding to and Subtracting from the Standard Bond; Suretyship: Fundamental Rights of Suretyship – Review of Indemnity and the Options Available to the Surety – 321 North Clark Street • 18th Floor • Chicago, IL 60654
3. FAX: 312/988-6230

REGISTRATION FORM

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 _____

How many Fidelity and Surety Law Committee Programs have you attended (including this one)?
 _____ 3 or less _____ 4 or more

I will attend the Construction Program

Session 1 (pick one)

- A. Project Finance: An In-depth Look at Choices and Limitations
- B. Which CIP Works for You? An In-depth Look at Project Insurance and How It Can Shape a Project
- C. How the SBA and Disadvantaged Business Programs are Incorporated into and Can Enhance a Public Project

Session 2 (pick one)

- D. Dispute Resolution as a Means of Averting Disaster
- E. The Owner's Evaluation of its Options During Performance
- F. Close-Out Workshop – Owner's Expectations

I will attend the Fidelity Program

I will attend the Surety Program

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

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

2. REGISTRATION FEES:

	On or Before	After	QTY	TOTAL
	<u>1/3/14</u>	<u>1/3/14</u>		
Insurance Company Employees:				
TIPS Members	\$225	\$250	_____	_____
Insurance Company Employees:				
Non-TIPS Members	\$275	\$325	_____	_____
Government Employee	\$500	\$600	_____	_____
TIPS Members	\$950	\$975	_____	_____
Law Student	\$295	\$395	_____	_____
General Attendee (all others)	\$1,125	\$1,150	_____	_____

3. SOCIAL EVENT TICKETS:

	QTY	TOTAL
Welcome Reception (Thursday) Included	_____	_____
Spouse/Guest Reception Ticket: \$75 (\$80 at door)	_____	_____

4. TOTAL PAYMENT:

TOTAL _____

5. PAYMENT INFORMATION

- Check (made payable to the ABA) Amer. Express
- Master Card VISA

CREDIT CARD NUMBER _____ EXPIRATION DATE _____

SIGNATURE _____

**THE FIDELITY AND SURETY LAW
COMMITTEE 2014
MID-WINTER PROGRAM:**

- CONSTRUCTION: WHAT WERE THEY THINKING? UNDERSTANDING THE CONSTRUCTION PROJECT FROM THE PUBLIC OWNER'S PERSPECTIVE
- FIDELITY: EXPANSION AND CONTRACTION: ADDING TO AND SUBTRACTING FROM THE STANDARD BOND
- FUNDAMENTAL RIGHTS OF SURETYSHIP – REVIEW OF INDEMNITY AND THE OPTIONS AVAILABLE TO THE SURETY

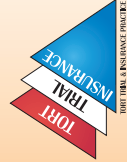
**JANUARY 23-24, 2014
THE WALDORF~ASTORIA HOTEL
NEW YORK, NY**

**REGISTRATION DEADLINE:
JANUARY 3, 2014**

**HOTEL DEADLINE:
DECEMBER 30, 2013**

**REGISTER ONLINE AT
WWW.AMERICANBAR.ORG/GROUPS/TORT_TRIAL_INSURANCE_PRACTICE.HTML**

ABA
**Defending Liberty
Pursuing Justice**



**AMERICAN BAR ASSOCIATION
Tort Trial & Insurance Practice Section
321 North Clark Street
Chicago, Illinois 60654**