

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

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



# 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

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 who 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.**

*Stradley, 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

### **CHARCETIA DIBARTOLO**

*Hinsshaw & 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 & Conners 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*  
*& Conners 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**

*Tressler 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

### 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](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](http://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](http://www.united.com). Online discount code ZR45461920
- DELTA AIRLINES (800) 328-1111 Domestic Code NMFUD, International Code NMGGY. Discount available at [www.delta.com](http://www.delta.com). Online meeting code: NMFUD
- VIRGIN AIRLINES [www.virginamerica.com](http://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](mailto: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](http://www.americanbar.org/groups/tort_trial_insurance_practice.html) or contact Donald Quarles at [Donald.quarles@americanbar.org](mailto: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](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](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](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](http://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

<u>Session 1 (pick one)</u>	<u>Session 2 (pick one)</u>
<input type="checkbox"/> A. Project Finance: An In-depth Look at Choices and Limitations	<input type="checkbox"/> D. Dispute Resolution as a Means of Averting Disaster
<input type="checkbox"/> B. Which CIP Works for You? An In-depth Look at Project Insurance and How It Can Shape a Project	<input type="checkbox"/> E. The Owner's Evaluation of its Options During Performance
<input type="checkbox"/> C. How the SBA and Disadvantaged Business Programs are Incorporated into and Can Enhance a Public Project	<input type="checkbox"/> 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 <u>1/3/14</u>	After <u>1/3/14</u>	<u>QTY</u>	<u>TOTAL</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:**

	<u>QTY</u>	<u>TOTAL</u>
Welcome Reception (Thursday) Included	_____	_____
Spouse/Guest Reception Ticket: \$75 (\$80 at door)	_____	_____
<b>4. TOTAL PAYMENT:</b>	<b>TOTAL</b>	_____

**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: ADD-  
ING 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](http://WWW.AMERICANBAR.ORG/GROUPS/TORT_TRIAL_INSURANCE_PRACTICE.HTML)



Defending Liberty  
Pursuing Justice

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