

The Fidelity Law Association 2021 Annual Conference

Wednesday, November 10, 2021

Westin Times Square

270 West 43rd Street • New York, NY 10036



CONFERENCE INFORMATION

Fidelity Law Association | 2021 Annual Conference | New York City, New York

On behalf of the Fidelity Law Association (FLA), it is our pleasure to bring to you our 27th Annual Conference. The FLA is a non-profit corporation dedicated to facilitating prompt and fair handling of fidelity claims. Although membership in the FLA is limited to persons employed in fidelity claims-handling or underwriting by insurance companies or reinsurers, our Annual Conference is open to anyone with an interest in fidelity or crime insurance.

Last year presented numerous challenges for all of us, the least of which was shifting to a virtual conference in light of the pandemic. While the conference was a success, we missed out on one of the most important aspects of our conference: getting to connect and visit with our colleagues from across the industry. This year, the FLA is in New York City on November 10, 2021. As safety is a primary concern for our membership, ***proof of vaccination will be required to attend the conference***, which will need to be presented at the hotel and at the registration table. The FLA is working with the hotel to ensure that Covid protocols are in place for the conference. We also are encouraging the use of masks while indoors. We recommend that you monitor local rules and regulations in regard to Covid protocols.

The Co-Chairs for the program, Adam Friedman, Chiesa Shahinian & Giantomasi PC, and Patty Ricciuti, The Hartford, have prepared an excellent program designed to benefit attendees of any experience level. A distinguished list of speakers will present articles on a variety of topics of interest to the fidelity industry, as reflected in the following pages. We also have applied for Continuing Education (CE) and Continuing Legal Education (CLE) credits in various states. In keeping with our commitment to give back to the host city, the FLA will be making a monetary donation to the New York Youth Baseball Foundation.

The Keynote speaker for this year's program is Bill Hardin of Charles River Associates. Bill has worked on over a thousand data incident/data breach cases, and has handled numerous claims involving ransomware, data extortion, business email compromise, nation state attacks, malware outbreaks, and insider threats. Many of his cases have been mentioned in publications such as The Wall Street Journal, Financial Times, Forbes, and Krebs on Security. Bill's topic is "What are Cyber Criminals Planning Next." His presentation is sure to be another in the line of topical, useful, and memorable keynote presentations that the FLA has been featuring for at least the past 15 years.

This year we also will be recognizing the recipient of the first annual FLA Diversity and Inclusion Award. The FLA Diversity and Inclusion Award will be awarded annually to honor a person or organization that has demonstrated a sustained commitment to the advancement of diversity and inclusion in the fidelity industry, and we are proud to celebrate the inaugural award recipient this year.

Finally, a personal thanks to all of our sponsors. Your sponsorship helps us to provide the quality programming and scholarly Journals that you have come to expect from FLA. In particular, I would like to thank our exclusive platinum sponsor, SDC CPAs, for not just their financial support but also for their volunteered services with respect to continuing education and conference support. If you are not a sponsor and would like to become one, please visit www.fidelitylaw.org for more information.

To say we look forward to seeing everyone in New York City is an understatement. We hope you will join us for this reunion.

Warmest regards,

Robert Flowers
President
The Fidelity Law Association

PROGRAM INFORMATION

Fidelity Law Association | 2021 Annual Conference | New York, New York

CO-CHAIRS

Patricia A. Ricciuti, *The Hartford*

Adam P. Friedman, *Chiesa Shahinian & Giantomasi PC*

SCHEDULE

7:30 a.m. – 8:45 a.m.

Registration and Continental Breakfast

8:45 a.m. – 9:05 a.m.

Welcome and Presentation of Diversity and Inclusion Award

Robert M. Flowers, President, *The Fidelity Law Association*

9:05 a.m. – 9:55 a.m.

Dissecting a Mortgage Fraud Claim Under Insuring Agreement “E”

The industry has seen a recent increase in mortgage fraud claims. Given the lightning-fast pace of the current real estate market, the rate of such claims is likely to continue to increase. This presentation reviews the facts behind a typical mortgage fraud, including the usual roles of the mortgage company, financing bank, and closing agent, and examines how unscrupulous participants are able to carry out such frauds. The presentation then reviews the requirements for coverage under Insuring Agreement (E) of the standard form Financial Institution Bond, including the types of documents normally covered, the meanings of the terms "original" and "forgery", as well as the "authorized representative" and "good faith" requirements. It also considers how these requirements for coverage are arguably impacted by business in the modern electronic world, and explores important claims-handling issues.

Matthew C. Kalin, *Travelers*

Michael Keeley, *Clark Hill PLC*

Charles Armstrong, *Clark Hill PLC*

9:55 a.m. – 10:45 a.m.

Freeze! You Have the Right to Receive Restitution ... Maybe: Insurers' Rights Under Federal Law

Many times, the bad actors responsible for claims against a fidelity bond or crime policy are criminally prosecuted and convicted. As part of the criminal judgment, courts may issue restitution orders against the bad actors. This presentation will address the federal criminal restitution process, the fidelity insurer's right to restitution, the enforcement of a federal restitution order, and ways that state law may impact the federal restitution process.

Keith Flanagan, *Travelers*

Ashley Gray, *Hiscox*

Ryan J. Weeks, *Mills Paskert Divers*

10:45 a.m. – 11:05 a.m.

MORNING BREAK

11:05 a.m. – 12:05 p.m.

What are Cyber Criminals Planning Next?

From ransomware to business email compromises, cyber criminals are launching attacks daily on all types of businesses. Who are the actors behind the attacks, how do they get into the business of extortion, how many crime groups are out there, and how can organizations protect themselves from these threats? This presentation will walk through the crime groups that are launching these attacks, the economics associated with them, and will take us out to many “dark” websites to see how the crime syndicates work.

Bill Hardin, *Charles River Associates*

12:05 p.m. – 1:15 p.m.

LUNCH BREAK (on your own)

1:15 p.m. – 1:25 p.m.

Welcome Back & Announcements

Patricia A. Ricciuti, *The Hartford*

Adam P. Friedman, *Chiesa Shahinian & Giantomasi PC*

1:25 p.m. – 2:15 p.m.

It’s Not a Direct Loss, But Is It Covered Property? The Impact of Direct Loss and Owned/Covered Property Interpretations on Current Fidelity Claims

Despite clear policy wording, some courts fail to recognize that fidelity bonds and crime policies are indemnity policies, not liability policies, and find coverage for losses based on the insured’s vicarious liability for an employee’s tortious acts towards a third party. Courts similarly have found coverage for an employee’s conduct that unintentionally and indirectly causes damage to the insured, or for losses of third-party property neither held by the insured nor for which the insured was responsible before the loss occurred. This presentation will address how fidelity bonds and commercial crime policies are designed to cover direct first-party losses and limit coverage of losses for property not owned by the insured, and the impact that judicial interpretation of “direct loss” and “ownership” provisions have had on current fidelity claims.

Michael V. Branley, *The Hartford*

Scott S. Spearing, *Hermes, Netburn, O’Connor & Spearing, P.C.*

Peter C. Netburn, *Hermes, Netburn, O’Connor & Spearing, P.C.*



2:15 p.m. – 3:05 p.m.

What is “Loss”? The Quantification of Loss

A threshold requirement to potential coverage under a fidelity policy, and one that may be taken for granted, is that the insured actually suffered a loss. Over time, the development and evolution of case law and the language used in fidelity policies created certain basic tenets when evaluating loss. For example, an actual, pecuniary loss – as opposed to a hypothetical or subjective loss to property the insured never owned or held – is typically a prerequisite to coverage. Despite the bedrock principle that the insured must suffer a loss to potentially implicate coverage, the term “loss” is almost universally undefined in fidelity policies. Therefore, numerous coverage issues have arisen – whether the insured actually suffered a loss, when the loss occurred, how to value such loss, and whether the loss resulted directly from the covered peril. In addition, the meaning of “loss” as addressed by a fidelity policy can be significantly different than “loss” as determined by an accountant following American Institute of Certified Public Accountants standards. This presentation will address the evaluation of loss from both a fidelity practitioner’s perspective and from an accounting perspective.

Joseph Collins, *Great American Insurance Company*

D.M. Studler, *SDC CPAs, LLC*

Justin D. Wear, *Manier & Herod, P.C.*

3:05 p.m. – 3:20 p.m.

AFTERNOON BREAK

3:20 p.m. – 4:10 p.m.

Bank Communications and Wholesale Electronic Payment Systems

Money is transferred from bank to bank, domestically and internationally, at a staggering amount each day. This presentation will explain how such transfers have been, are, and perhaps will be accomplished, both in terms of the payment systems used and the communication methods that banks employ to facilitate the transfer. This presentation further addresses what exposures the various players in the process have with respect to money transfers, and the future of money transfers as more and more governments consider digital currencies.

Theresa Biedermann, *Berkshire Hathaway*

Joel T. Wiegert, *Hinshaw & Culbertson*

Christopher D. Blum, *Hinshaw & Culbertson*

4:10 p.m. – 5:00 p.m.

Fidelity Law Update 2021

This presentation will provide an overview of the most important fidelity cases decided between June 1, 2020, and June 1, 2021. Among the cases to be discussed are several important opinions that offer insight into the meaning of the phrase “resulting directly from”, as well as social engineering, computer fraud, and funds transfer fraud provisions.

Gabriel M. Speciale, *QBE North America*

Delaney L. Beier, *Clark Hill PLC*

5:00 p.m. – 5:10 p.m.

Closing Remarks

Robert M. Flowers, *President, The Fidelity Law Association*

Suggested dress for the conference is business casual.

FACULTY

Fidelity Law Association | 2021 Annual Conference | New York, New York

CHARLES ARMSTRONG is Senior Counsel with Clark Hill PLC in Dallas, Texas. He is a graduate of Texas A&M University and received his law degree from Baylor University School of Law, *cum laude*. He is an associate editor of the Fidelity Law Journal and co-chair of the V-Log subcommittee of the Fidelity and Surety Law Committee of the American Bar Association, Tort Trial and Insurance Practice Section.

DELANEY L. BEIER is an associate with Clark Hill PLC in Dallas, Texas. She is a graduate *summa cum laude* of Drake University and obtained her MBA from Drake University and her law degree with High Honors from Drake University's School of Law.

THERESA BIEDERMANN is a Vice President with Berkshire Hathaway Specialty Insurance in New York. She is a graduate of Rutgers University and obtained her law degree from the University of Illinois Chicago School of Law.

CHRISTOPHER D. BLUM is a partner with Hinshaw & Culbertson LLP in its Chicago office. He graduated *magna cum laude* from St. Olaf College and obtained his law degree *cum laude* from the Loyola University Chicago School of Law.

MICHAEL V. BRANLEY is Senior Claims Consultant at The Hartford in New York. He is a graduate of the State University of New York at Oneonta and obtained his law degree from Brooklyn Law School. Mike currently serves as the Treasurer of the Fidelity Law Association.

JOSEPH COLLINS is a Senior Financial Product Claims Representative with Great American Insurance Company in Windsor, Connecticut. He is responsible for Crime, Financial Institution Bond, and Kidnap and Ransom matters. Joseph earned his Bachelor's degree and Master's of Science degree in National Security Studies, with a concentration in Information and Protection Security, from the University of New Haven.

KEITH FLANAGAN is Managing Claim Counsel, Recovery Management Unit, with Travelers Casualty and Surety Company of America, where he works in the Naperville, Illinois office. He obtained his B.A. from Georgetown University and his J.D. from the Boston University School of Law.

ROBERT M. FLOWERS is a 2nd Vice President, Management Liability First Party Claim for Travelers in Hartford, Connecticut. He is a graduate of the University of Nevada-Reno. Bob's team is responsible for a variety of First Party Management Liability products, including Commercial Crime, FI Bond, First Party Cyber, ID Fraud and Kidnap and Ransom claims.

ADAM P. FRIEDMAN is a member of Chiesa Shahinian & Giantomasi PC, working primarily out of its New York office. He received his B.S. (in meteorology) from Cornell University and his J.D. from Yeshiva University's Benjamin N. Cardozo School of Law, where he was an editor of the *Cardozo Law Review*. Adam is proud to have been a Past Chair of the Fidelity and Surety Law Committee of the American Bar Association, Tort Trial and Insurance Practice Section.

ASHLEY GRAY is a crime and cyber complex claims specialist at Hiscox Insurance Company in Chicago, Illinois. She is a graduate of Duke University and Duke University School of Law.

MATTHEW C. KALIN is Senior Claim Counsel, Bond & Specialty Insurance, with Travelers in Braintree, Massachusetts. He is a graduate of Boston College and received his J.D. from Suffolk University Law School.

MICHAEL KEELEY is a member of the Dallas, Texas, office of Clark Hill PLC. He is a graduate of the University of Arizona, *summa cum laude with honors*, and the University of Arizona School of Law, *cum laude*. He is the Editor-in-Chief of the Fidelity Law Journal, Advisor Emeritus to the Fidelity Law Association, a Past Chair of the Fidelity and Surety Law Committee of the American Bar Association, Tort Trial and Insurance Practice Section, Advisor to The Surety & Fidelity Association of America, and past Editor-in-Chief of the Tort & Insurance Law Journal. Mike specializes in handling crime claims, including cyber-related losses, domestically and abroad, as well as other coverage matters.

PETER C. NETBURN is a shareholder in Hermes, Netburn, O'Connor & Spearing, P.C., in Boston. He is a graduate of the State University of New York at Stony Brook and obtained his law degree from the Boston University School of Law.

PATRICIA A. RICCIUTI is a Claims Consultant with The Hartford, focusing on the handling of fidelity matters. She previously served as Co-Chair, Regions Co-Chair, and Technology Co-Chair of the Young Professionals Subcommittee of the Fidelity and Surety Law Committee of the American Bar Association, Tort Trial and Insurance Practice Section. Patty graduated from Bay Path College with an Associate's Degree in legal studies, and thereafter received a Bachelor's degree from the University of Connecticut.

SCOTT S. SPEARING is a shareholder in Hermes, Netburn, O'Connor & Spearing, P.C., in Boston. He is a graduate of the United States Naval Academy and obtained his law degree from Northeastern University. Scott currently serves as an Advisor to the Fidelity Law Association.

GABRIEL M. SPECIALE is a Senior Claims Technical Specialist with QBE North America. He is a graduate of City College of New York.

D.M. STUDLER is a principal of SDC CPAs in Aurora, Illinois. She is a graduate of Indiana University and obtained her Master's in Accountancy *summa cum laude* from the University of Texas.

JUSTIN D. WEAR is a partner with Manier & Herod in Nashville. He is a graduate *magna cum laude* of the University of the South and obtained his law degree *summa cum laude* from the University of Tennessee College of Law.

RYAN J. WEEKS is a shareholder of Mills Paskert Divers in Tampa, Florida. He received his B.S. in Finance and J.D. from the University of Florida. Ryan serves as a Vice-Chair of the ABA Cybersecurity and Data Privacy Committee and the Fidelity and Surety Law Committee of the American Bar Association, Tort Trial and Insurance Practice Section.

JOEL T. WIEGERT is a partner with Hinshaw & Culbertson LLP in Minneapolis. He is a graduate of Concordia University and obtained his law degree, with high honors, from the Drake University School of Law.



ADDITIONAL INFORMATION

Fidelity Law Association | 2021 Annual Conference | New York, New York

HOTEL

A limited number of rooms have been blocked for program registrants at the Westin New York Times Square, 270 West 43rd Street, New York. The Westin New York Times Square has a hotel room rate of \$329.00 single/double plus taxes of 14.75% and \$3.50. For reservations, please call the hotel directly at (212) 201-2700.

The room block will be held until exhausted or until **Tuesday, October 19, 2021**, at 5:00 p.m. (eastern). After this deadline, reservations will be confirmed based upon availability. Please refer to the “**ABA Tort, Trial & Insurance Practice Section 2021 FSLC & FLA Fall Meeting**” when calling the hotel to make reservations.

Hotel check-in is 4:00 p.m. and checkout is 11:00 a.m. All reservations must be guaranteed by credit card. Individuals with guaranteed reservations must cancel their reservations 48 hours before the scheduled day of arrival to avoid a one-night cancellation charge.

PERSONS WITH DISABILITIES

If you require special arrangements, please call the Westin Times Square at (212) 201-2700. Reasonable advance notice is requested.

SCHOLARSHIPS

Scholarships are available for those who otherwise would be unable to attend the Conference. The application for scholarships can be found on the FLA website at www.fidelitylaw.org.

CE AND CLE CREDIT

The FLA will directly apply for Continuing Education Credit (CE) and Continuing Legal Education Credit (CLE) in the following states:

- Continuing Education Credit (CE): CT, FL, GA, NY, and TX
- Continuing Legal Education Credit (CLE): All states except AK, AZ, HI, IA, MS, NH, SD, and WA.

Information regarding CE and CLE credit, including a Certificate of Attendance form, will be available at the Conference registration desk. If you have any questions concerning CE or CLE, please email us through our website: www.fidelitylaw.org.

FSLC FALL PROGRAM

The American Bar Association Tort Trial & Insurance Practice Section, Fidelity and Surety Law Committee, will conduct its Fall Fidelity Program at the Westin Times Square on November 11-12, 2021.

For information regarding the FSLC's Fall Program, including registration information, please visit the FSLC's website at www.americanbar.org/groups/tort_trial_insurance_practice/committees/fidelity-and-surety-law.

CANCELLATION POLICY

A registration fee refund may be requested if made by November 1, 2021. Registrations received after November 1, 2021, are not refundable. Registrants who notify the FLA after November 1, 2021, that they are unable to attend may send a substitute or receive course materials in lieu of a refund.

COVID-19 POLICIES

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Attendees must be fully vaccinated against Covid-19 to attend the Conference, and must show proof of vaccination at the registration desk to be allowed entry into the Conference. The FLA regrets that current circumstances prevent it from allowing anyone to enter the Conference who has not shown proof of vaccination, without exception.

The FLA, in conjunction with the Westin Times Square, are taking steps to make attendance at the Conference as safe as reasonably possible. It is imperative that all attendees of the Conference strictly comply with all laws, regulations, and policies of the Westin Times Square and the Conference relative to the Covid-19 pandemic. Any attendee failing or refusing to comply with any such law, regulation, or policy may be asked to leave the Conference. All attendees agree to comply with any and all requests and instructions from a representative of the Conference or of the Westin Times Square relating to compliance with any Covid-related law, regulation, or policy, including (but not limited to) a request that the attendee leave the Conference.

All attendees will be required to execute the following Covid liability waiver. This waiver may be executed online when registering or in hard copy at the registration desk. No registrant will be allowed to attend the Conference without having executed this waiver:

All attendees of the Fidelity Law Association 2021 Annual Conference (“the Conference”) acknowledge that Covid infection risks may continue to exist during attendance at the Conference, travel to/from the Westin Times Square, and attendance at events associated with the Conference, and assume all such risks.

As a registered attendee of the Conference, I expressly release the Fidelity Law Association and its officers, directors, employees, representatives, sponsors, successors, and assigns, and the Westin Times Square and its employees, agents, representatives, parents, affiliates, successors, and assigns, from any and all claims, suits, demands, losses, damages, expenses, and/or liability of whatever kind or nature (collectively, “Liability”), under any theory of law or equity, that may arise during or as a result of my presence at the Conference (including any social or other events associated or affiliated with the Conference), including (but not limited) to Liability related to or arising out of illness, injury, or death associated with Covid-19 infection, and complications, symptoms, or other effects resulting from contracting Covid-19. During the Conference, I agree to comply with all laws, regulations, policies, instructions, and requests made or directed by the Conference, the Fidelity Law Association, the Westin Times Square, the City of New York, and the State of New York, regarding Covid infection prevention measures.

Name: _____

Signature: _____

Date: _____

REGISTRATION INFORMATION

Fidelity Law Association | 2021 Annual Conference | New York, New York

REGISTER ONLINE

You may register online at www.fidelitylaw.org and pay the appropriate registration fee. Payment by credit card is required for online registrations.

REGISTER BY MAIL

You may register by mail by completing the following and sending it, along with your check for the appropriate registration fee, to the Fidelity Law Association, P.O. Box 240, Belle Mead, NJ 08502. We can accept only payment by check drawn on U.S. funds.

Last Name First Name MI

Name (as you want it to appear on your name badge)

Company/Firm

Title Department.....

Address 1

Address 2

City/State/Zip..... Country

Telephone Cell Phone

Email

Check here if: This is your first year attending an FLA meeting.
 You would like to be placed on the FLA mailing list.

INSURANCE COMPANY EMPLOYEES ONLY: I wish to apply to become a Fidelity Law Association Member.
 I wish to renew my Fidelity Law Association membership.

- By attending this conference, the annual Member fee if \$25 is waived.
- A listing of membership benefits can be found in the Membership Section of the FLA's website, www.fidelitylaw.org.
- Your FLA Membership runs the calendar year January 1, 2022, to December 31, 2022.
- NEW MEMBERS: Your password to the FLA Membership Section will be sent to the above email address once your membership application has been approved.

REGISTRATION FEES

Includes attendance at the November 10, 2021, Annual Conference and a copy of the *Fidelity Law Journal*, and other program materials.

The registration fees for the Conference are:

- Insurance Company Employees: \$225 (received by November 1, 2021)
\$275 (received after November 1, 2021)
- Non-Insurance Company Employees: \$375 (received by November 1, 2021)
\$425 (received after November 1, 2021).

Your registration must be received by **November 1, 2021**, to ensure that your name is included on the registration list. On-site registrations with payment will be accepted, space permitting. **An additional fee of \$25 will apply to registrants made the day of the Conference.**

Fidelity Law Association 2021 Platinum Sponsor

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LLP

Weinstein Radcliff Pipkin LLP



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Please visit www.fidelitylaw.org for the latest conference information!

