Contract bond sureties annually issue performance and payment bonds on thousands of construction projects domestically and internationally. Countless legal issues arise in a multitude of contexts both before and after the issuance of these bonds. The number of books the Fidelity and Surety Law Committee of the Tort Trial and Insurance Practice Section of the American Bar Association (the “FSLC”) has published reflects the complexity of the subject matter. Among these books are The Surety’s Indemnity Agreement: Law and Practice, 2nd Edition, Bond Default Manual, 4th Edition, and The Law of Payment Bonds, 2nd Edition. In addition, the FSLC has published other books and articles that focus on more narrow issues that can arise from contract bond claims.

The Law of Performance Bonds has long been one of the FSLC’s signature publications. The FSLC published the first edition in 1999 under the leadership of Kevin L. Lybeck and H. Bruce Shreves. In 2009, Kevin L. Lybeck, Lawrence R. Moelmann, and Matthew H. Horowitz brought the second edition to life. These prior editions have not only guided surety claims professionals and practitioners, but they have also helped shape national jurisprudence. Federal and state court judges throughout the country have cited the prior editions for different principles.

The preparation of this book began in June, 2016, not simply to update the prior edition but to examine the current state of the law and identify trends that have emerged in the past decade. The FSLC is publishing this edition in conjunction with its Mid-Winter Meeting held on January 16-18, 2019 in San Diego, California. That it has taken from June, 2016 to January, 2019 to publish this book speaks to the incredible level of effort it took from dozens of people to make the book a reality.

First, the editors, Kimberly D. Zanotta and Gregory M. Weinstein, have been the driving force behind every aspect of the book. They brought their own vision to how they wanted this book
to be organized and the content presented. They have been diligent managers of every detail you will find in the pages that follow.

Second, the authors and other contributors spent hours researching multiple issues, some of them incredibly nuanced, and then writing their respective chapters. Associate attorneys, law clerks, and others provided valuable support to the named authors. Administrative assistants for the authors did not simply type content. They had to ensure compliance with type-setting, spacing, formatting, and several other guidelines to ensure the consistent appearance of the text.

Third, Michael T. Pipkin (the son of Past-Chair, Mike F. Pipkin) graciously checked every citation in every footnote of every chapter for Blue Book compliance. At the time of publication, Michael is a second year law student at Southern Methodist University’s Dedman School of Law. It is hard to imagine a more tedious task for one law student to so willingly handle.

All of these people volunteered their time and set aside other responsibilities to meet the rigorous demands and exacting requirements that publishing a book requires. It is impossible to thank each of these people enough for their effort.

As for the substance of the book, the editors have organized the chapters to largely mirror the format of The Law of Performance Bonds, 2nd Edition. However, the chapters are not simply a re-write of the chapters in the prior edition. The content is entirely new.

To make this book a more valuable reference tool, a detailed table of contents appears at the beginning of the book that identifies the various topics appearing in each chapter. In addition, a table of cases cited in the chapters is included in the back of the book.

While this book is not a substitute for more comprehensive research in the jurisdiction in which a particular matter arises, it presents a detailed discussion of many of the pertinent issues that can surface in the performance bond context, and it allows for strategic evaluation of potentially viable options available to the surety.

Any opinions expressed in this book are solely those of the authors of the chapter in which the opinions appear. Those opinions
do not bind, and may not reflect the opinions of, the editors or the employers of any of the authors, and they may not match the opinions of authors of other chapters.

Our hope is that this book becomes the resource for both experienced and entry-level claim professionals, attorneys, consultants, and other surety experts who face performance bond issues, and that it helps these professionals develop strategies to achieve effective outcomes. It has been an honor to work with the dedicated people who so cheerfully prepared this book.

Brett D. Divers, Chair
ABA/TIPS Fidelity and Surety Law Committee
Tampa, FL

January 2019