



American Bar Association
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Chicago, IL 60610

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OF

WINTER
MEETING

January 27

WALDORF-ASTORIA
NEW YORK, NY



Are You Covered?

INSURANCE PRODUCTS FOR
CONSTRUCTION PROJECTS



WINTER
MEETING

05

January 27

WALDORF-ASTORIA • NEW YORK, NY





Are You Covered?

INSURANCE PRODUCTS FOR CONSTRUCTION PROJECTS

In January, 1995, the Forum on the Construction Industry and the TIPS Fidelity & Surety Law Committee took a comprehensive look at construction insurance and surety issues in a program entitled “ I Got Ya’ Covered: Insurance and Surety Bonds In The ‘90s”. There have been many changes in the insurance and surety markets since 1995 and during that time courts around the country have had a full docket of cases involving insurance issues. The impact of those developments is reflected in the title of the program planned for January 2005:

“Are You Covered? Insurance Products for Construction Projects”.

This in depth one day program will look at the current state of the insurance and surety markets and examine how market changes and legal developments have altered the way those involved in construction and their attorneys approach insurance and suretyship. After a discussion of current market conditions, a panel of experienced surety lawyers who will examine the interplay between liability policies and the rights and obligations of sureties in different contexts. Nationally recognized experts in construction insurance issues will examine a variety of current topics throughout the day including the commercial general liability policy evolution and case law involving this coverage, professional liability insurance and recent developments in addition insured endorsements. The program will conclude with an examination of agreements to procure insurance, discussing whether contractors can deliver the coverage they have agreed to provide.

Terrence L. Brookie
Program Co-Chair
Locke Reynolds, LLP
Indianapolis, IN

Terry J. Galganski
Program Co-Chair
Jacobs Engineering Group
St. Louis, MO

Robert F. Carney
Program Co-Chair
Whiteford, Taylor & Preston, LLP
Baltimore, MD

Robert J. MacPherson
Governing Committee Liaison
Postner & Rubin
New York, NY

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Dallas, TX

Manager

ALANNA SULLIVAN
American Bar Association
Chicago, IL



Program Schedule

8:15 a.m. - 8:25 a.m.

WELCOME & OPENING REMARKS

James Duffy O'Connor
Chair, Forum on the Construction Industry
Maslon Law Firm, Minneapolis, MN

Samuel J. Arena
Chair, TIPS Fidelity & Surety Law Committee
Stradley Ronon Stevens & Young LLP, Philadelphia, PA

INTRODUCTION TO THE PROGRAM

Terrence L. Brookie
Program Co-chair
Locke Reynolds LLP, Indianapolis, IN

Robert F. Carney
Program Co-chair,
Whiteford, Taylor & Preston LLP, Baltimore, MD

Terry J. Galganski
Program Co-chair, Risk Manager
Jacobs Engineering Group Inc., St. Louis, MO

8:25 a.m. — 9:00 a.m.

CURRENT INSURANCE & SURETY MARKET CONDITIONS

Brian Schofield
Marsh & McLennan, Philadelphia, PA

Kevin L. Lybeck
St. Paul Travelers, Hartford, CT

This session will examine the current state of the insurance and surety markets in the construction industry. The panelists will discuss the insurance and surety industry including current conditions, how the market and the industry has evolved in the last 10 years, new products, and where the market is headed.

9:10 a.m. — 10:05 a.m.

IMPORTANCE OF INSURANCE COVERAGES FOR SURETIES

Joanne S. Brooks
Zurich Insurance, Baltimore, MD

Bruce C. King
Carlton Fields, Miami, FL

Wayne D. Lambert
Forcon International, Avon, CT

The policies, exclusions, endorsements, and contract provisions being discussed throughout the program are very important to sureties and the professionals who advise sureties. The surety that performs its principal's obligations is subrogated to the rights of the principal and other parties, including rights under the insurance products being discussed. Those policies may play a significant role in the surety's pursuit of indemnification or reimbursement. Insurance coverage required

on construction projects is a concern in many performance bond situations, including when the surety takes over a project or arranges for completion. This segment also addresses what happens when the principal fails to provide insurance coverage as required by the bonded contract.

10:05 a.m. — 10:20 a.m.
COFFEE BREAK

10:20 a.m. — 11:30 a.m.
CGL POLICY – PANEL DISCUSSION

Marc Dembling

Moderator

Methfessel & Webel, Edison, NJ

Mary E. Borja

Wiley Rein & Fielding LLP, Washington, DC

Clifford J. Shapiro

Sachnoff & Weaver LTD, Chicago, IL

Charles E. Spevacek

Meagher & Geer PLLP, Minneapolis, MN

Coverage litigation over construction issues under a CGL policy continues to increase in the number of cases and the complexity of the issues. Our panel of experienced construction and coverage attorneys will participate in a moderated presentation that will include a lively discussion of these challenging coverage issues. Recent judicial interpretations and important new form changes affecting the CGL policy will be addressed, including the split in authority regarding the “occurrence” issue, endorsements that eliminate the exception to the “your work” exclusion for work performed by a subcontractor, mold and EIFS exclusions, professional liability exclusions, contractual liability coverage, terrorism coverage considerations, and an introduction to the new additional insured endorsements.

12:15 p.m. — 1:45 p.m.
LUNCH

Kevin M. Rampe

President

Lower Manhattan Development Corporation

The LMDC was created in the aftermath of 9-11 to help plan and coordinate the rebuilding and revitalization of Lower Manhattan.

2:15 p.m. — 3:00 p.m.
PROFESSIONAL LIABILITY POLICY – PANEL DISCUSSION

Lorelie S. Masters

Jenner & Block, Washington, DC

Owen J. Shean

Wickwire Gavin, Vienna, VA

The speakers will address the claims-made aspects of this coverage and some of its unique exclusions. Following that foundation, they will turn their focus to applying this coverage in certain project delivery

systems and in highlighting several, significant other issues (e.g. additional insureds, practice vs. project policies, to report or not report a claim, tail and excess coverage).

3:00 p.m. — 3:45 p.m.
ADDITIONAL INSURED ENDORSEMENT FORMS

This section will look at the evolution of this widely used endorsement since 1986 and examine what you can get and for how much, and where we are heading.

Jack P. Gibson

CPCU, CLU, ARM, President of International Risk Management Institute, Inc., Dallas, TX

3:45 p.m. — 4:00 p.m.
BREAK

4:00 p.m. — 5:00 p.m.
AGREEMENTS TO PROCURE INSURANCE “CAN YOU DELIVER?”

Terry J. Galganski

Risk Manager

Jacobs Engineering Group Inc., St. Louis, MO

Donald S. Malecki

Chairman & CEO, CPCU

Donald S. Malecki & Associates, Inc., Cincinnati, OH

The panelists will present the essential question surrounding contract insurance requirements: What is the right balance? In addressing this question, the speakers will look at industry association contract forms and client-authored contract examples and highlight the many diverse factors affecting these requirements: their authors’ insurance knowledge base, adequate recognition of a party’s risk management philosophy and its impact on them, the increasingly fast-pasted evolution in insurance coverage, practical difficulties in ensuring the coverage requested is obtained and the age old problem: insurance is always the last item to be addressed by the parties. With these dynamics, they will address what they see as “The Top Ten Insurance Requirement Flaws” and what to do about them.

5:00 p.m.
CLOSING REMARKS



SEASON PASS

33%



How can my firm save up to 33% by attending Forum on the Construction Industry Programs?

The Forum on the Construction Industry's Season Pass program will decrease your registration fees as you increase your firm's attendance at our 3 meetings per year.

HOW IT WORKS:

Buy one season pass entitling you or others from your firm to attend three concurrent Forum programs. The Pass becomes valid on the date of purchase, and you will receive a 20% discount. Additional savings will be at least as follows:

YOU PAY:

<input type="checkbox"/> 1 pass (3 programs)	\$1,415.00
(a total savings of 20% or \$283.00)	
<hr/>	
	\$ 1,132.00
<input type="checkbox"/> 2 passes (2x3 programs)	\$2,830.00
(a total savings of 25% or \$707.50)	
<hr/>	
	\$ 2,122.50
<input type="checkbox"/> 3 passes (3x3 programs)	\$4,245.00
(a total savings of 33% or \$1,400.00)	
<hr/>	
	\$2,845.00
<input type="checkbox"/> 4 passes (4x3 programs)	\$5,660.00
(a total savings of 33% or \$1,867.80)	
<hr/>	
	\$ 3792.20

HOW TO REDEEM:

1. Check the box above of the plan you would like to purchase
2. Fill out the payment information below
3. Return this information with your completed registration form and payment directly to the ABA:
ABA Forum on the Construction Industry
M.S. 18.2
Attn: Alanna Sullivan
321 N Clark Street
Chicago, IL 60610

By following these steps you will be automatically registered for the January program and will receive your remaining vouchers in the mail.

Please note: *Season pass vouchers are transferable within your firm but cannot be sold or assigned to others outside of your law firm. They cannot be used for events other than the 2005 Forum programs.*

TOTAL PAYMENT:

Total \$ _____

SEASON PASS PAYMENT INFORMATION:

- Check (made payable to ABA)
- Season Pass Voucher
- MasterCard VISA
- American Express

Credit Card Number Expiration Date

Signature



For a brochure on the **2005 ABA Tort and Insurance Practice Section, Fidelity & Surety Law Committee Midwinter Meeting**, Friday, January 28, 2005, call (312) 988-5672 or visit www.abanet.org/tips.



Conference Information



ADVANCE REGISTRATION

Please complete and return the attached registration form with your payment by **JANUARY 7, 2005**. If you wish to have your name appear on the pre-registration list distributed at the program, we must receive your registration no later than **JANUARY 7, 2005**.

Conference registrations will only be accepted when accompanied by a check, Visa, American

Express or MasterCard information. Credit card registrations may be FAXED to T-Rex directly at (630) 262-1520. *Registrations cannot be held without payment.*

ON SITE REGISTRATION

On site registration is available for those persons who missed the registration deadline. If you plan to register at the door, you must call (312) 988-5579 at least 72 hours before the conference to confirm that space is still available. Failure to call in advance may result in not being admitted to a sold out program. On site registration will only be accepted when accompanied by a check, money order, American Express, Visa or MasterCard information. *Registrations will not be accepted without payment.*

REGISTRATION CONFIRMATION

In order to be listed in the pre-registration list distributed at the program, registrations must be received by **JANUARY 7, 2004**. If you do not receive a written confirmation by **JANUARY 7, 2005**, please call T-Rex directly at (630) 262-1599 to verify that your registration form and check were received. Failure to call in advance of the program may result in not being admitted.

TUITION

Tuition includes admission to the program, coffee breaks, lunch, and one set of program course materials. Lunch is limited to registrants, faculty and members of the press.

CANCELLATION POLICY

No refunds will be granted for cancellations received after **JANUARY 7, 2005**. To receive a fund (less a \$50 administrative fee), cancellations must be made **IN WRITING and RECEIVED** on or before **JANUARY 7, 2005**. Registrants who are unable to attend may send a substitute or receive course materials in lieu of a refund. The ABA reserves the right to cancel any program, and assumes no responsibility for personal expenses.

HOTEL

The conference will be held at The Waldorf=Astoria Hotel, 301 Park Avenue, New York, NY 10022. Reservations can be made by calling the Hotel directly at 1-800-WALDORF. To ensure availability please make your reservation by **Monday, January 10, 2005**. The Hotel Reservation Office will assign rooms on a space available basis. Hotel check-in time is 3:00 p.m. and the check-out time is 12:00 p.m. Reservations must be cancelled 48 hours prior to scheduled day of arrival to avoid a one night's cancellation charge. Conference Rates: \$229.

AIR TRANSPORTATION

You can fly to ABA meetings with unbeatable airfares on the following carriers by purchasing your ticket under the **ABA Discount Code** and using one of two options: **Percentage Discounts** or **Zone Fares**. Once your airfare has been determined, the percentage discount can then be applied to produce additional savings to you. By asking the agent to compare the percentage-discounted fare with the carrier's **Zone Fares**, even greater savings may be achieved. **Zone Fares** are more flexible and user-friendly than non-refundable, restricted airfares. While **Zone Fare**

rules and restrictions vary with each airline, most only require a 7-day advance purchase; do not require a Saturday night stay; are changeable and refundable and require only a 2-day minimum stay.

The ABA Discounted Meeting Airfares are available on the following airlines through your travel agent, directly from the airlines or from the ABA travel agency, Tower Travel at (800) 921-9190.

American Airlines	17715
Delta Air Lines	207843A
US Airways	65163236
Continental Airlines	VX6EKF

Z Code: ZDJR - Discount is only for travel to Mexico.

CLE CREDIT

Accreditation has been requested for the conference from every state with mandatory continuing legal education (MCLE) requirements for its lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE". Check your state agency for confirmation of this program's approval. Attorneys seeking to obtain MCLE credit in Louisiana and Pennsylvania are required to pay state accreditation fees directly to that state. Certificates of attendance will be available at the conclusion of this conference. For questions pertaining to the number of credit hours granted by each state, call (312) 988-6217 2 to 3 weeks before the conference.

MEMBERSHIP

As an added bonus to new members, the member's tuition rate will be available to registrants who become members of the Forum or TIPS on or before the first day of the program. For your convenience, a Forum membership form is included in the brochure. Membership dues are not deductible as charitable contributions for federal income tax purposes. However, such dues may be deductible as a business expense.

TAX DEDUCTION FOR EDUCATIONAL EXPENSES

In the United States, an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals, and lodging expenses. (see Treas. Reg. 1.162-5) (Coughlin vs. Commissioner 203 F 2d 307).

COURSE MATERIALS

If you are not planning to attend the program and wish to order the course materials, check the appropriate box on the registration form and send it with the appropriate fees. Allow approximately 3-4 weeks after the program for delivery.

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required for an individual with a disability to attend this program, please submit your request in writing to Alanna Sullivan, American Bar Association, 750 N. Lake Shore Drive, MS 11.2, Chicago, IL 60611, or Fax to (312) 988-5677, no later than **JANUARY 7, 2005**.

FORUM ON THE CONSTRUCTION INDUSTRY WEBSITE

www.abanet.org/forums/construction/home.html

Program Registration Form

* THIS FORM IS AVAILABLE ONLINE AT:
www.abanet.org/forums/construction/home.html

Housing Deadline: January 10, 2005
Registration Deadline: January 7, 2005

Please print or type

1. REGISTRANT INFORMATION

Last Name		First Name	M.I.
(Name as you wish it to appear on attendee list & name badge)			ABA Member ID#
Firm/Company/Agency			
Address			
City		State	Zip
(Area Code) Business Phone Number		(Area Code) Business Fax Number	
E-mail Address			
Spouse or Guest (Print as you wish names to appear on badge)			

2. REGISTRATION FEES:

You may use this form to register for the Forum on the Construction Industry/TIPS Joint Meeting as well as the ABA TIPS FSLC Midyear Meeting.

A. Thursday, January 27, 2005 THE FORUM ON THE CONSTRUCTION INDUSTRY 2004 MIDWINTER MEETING

(Co-sponsored by TIPS FSLC)

	ON OR BEFORE 1/7/05	AFTER 1/7/05
<input type="checkbox"/> General Attendees	\$425	\$450
<input type="checkbox"/> Forum Members	\$360	\$385
<input type="checkbox"/> TIPS Members	\$360	\$385
<input type="checkbox"/> Government/Academic/YLD	\$260	\$285
Insurance Company Employees:		
<input type="checkbox"/> Non-TIPS members	\$260	\$285
<input type="checkbox"/> TIPS members	no charge	\$285
<input type="checkbox"/> Law Students	\$160	\$160
Subtotal	\$ _____	\$ _____

B. Friday, January 28, 2005 ABA TIPS FIDELITY & SURETY LAW COMMITTEE 2004 ANNUAL CLE MIDWINTER MEETING

	ON OR BEFORE 1/7/05	AFTER 1/7/05
<input type="checkbox"/> General Attendees	\$450	\$475
<input type="checkbox"/> Forum Members	\$395	\$420
<input type="checkbox"/> TIPS Members	\$395	\$420
<input type="checkbox"/> Government Employees	\$150	\$175
Insurance Company Employees:		
Non-TIPS members	\$150	\$175
TIPS members	no charge	\$175
<input type="checkbox"/> Law Students	\$150	\$150
Subtotal	\$ _____	\$ _____

3. SOCIAL EVENT TICKETS:

1/27/05 TIPS FSLC Welcome Reception	Included in Friday's registration
Spouse/Guest Ticket	\$50 (\$55 at door) \$ _____
1/28/05 TIPS FSLC Luncheon	Included in Friday's registration
Spouse/Guest Ticket	\$80 (\$85 at door) \$ _____
Subtotal	\$ _____

4. MATERIALS ONLY:

I will not be attending the seminars and wish to order program materials for:

<input type="checkbox"/> The Forum on the Construction Industry/ TIPS FSLC Joint 2005 Meeting	\$150
<input type="checkbox"/> ABA TIPS Fidelity & Surety Law Committee Midyear Meeting	\$150
Subtotal	\$ _____

5. TOTAL PAYMENT:

Total (Add subtotals 2a, 2b, & 3 or 4):
\$ _____

6. PAYMENT INFORMATION:

- Check (made payable to ABA)
 Season Pass Voucher
 MasterCard American Express VISA

Credit Card Number _____ Expiration Date _____

Signature _____

7. MEMBERSHIP APPLICATIONS:

Please enroll me as a member of the **Forum on the Construction Industry**. Membership fee (\$40 Regular/\$5 Law Student). I understand I must be a member of the ABA and at least one Section. I belong to the following Section(s):

I have enclosed a separate check for \$40 made payable to the American Bar Association.

I am a member of the ABA and wish to join the **Tort & Insurance Practice Section**. I have enclosed a separate check for \$50 made payable to the American Bar Association.

8. THREE WAYS TO REGISTER:

ONLINE:
www.abanet.org/forums/construction/home.html

MAIL:
Technical Registration Experts (T-Rex)
FORUM ON THE CONSTRUCTION INDUSTRY
13 South 2nd Street, Suite 2
Geneva, IL 60134

FAX:
Fax: (630) 262-1520
T-Rex phone is (877) 309-1565 or (630) 262-1599