



Sponsored by the Tort Trial & Insurance Practice Section
Property Insurance Law Committee



Uniting Plaintiff, Defense, Insurance and Corporate
Counsel to Advance the Civil Justice System

**AMERICAN BAR ASSOCIATION
TORT TRIAL & INSURANCE PRACTICE
SECTION PRESENTS**

**FROM CLAIM TO VERDICT:
LITIGATING THE COMPLEX
COMMERCIAL PROPERTY
INSURANCE CLAIM**

**PROPERTY INSURANCE LAW COMMITTEE
ANNUAL SPRING CLE MEETING**

MAY 7-9, 2015

**JW MARRIOTT SAN ANTONIO
HILL COUNTRY RESORT & SPA
SAN ANTONIO, TX**



AMERICAN BAR ASSOCIATION



GREETINGS

Dear Colleagues:

Welcome to the 2015 Spring Meeting for the ABA Tort Trial & Insurance Practice Section's Property Insurance Law Committee! This year's Meeting will be held at the luxurious JW Marriott Hill Country Resort & Spa near San Antonio, Texas. Ranked as one of the top 500 hotels in the world by Travel + Leisure Magazine, the resort features wonderful restaurants, a signature spa, luxurious guestrooms and suites, and is home to the 36-hole TPC San Antonio, featuring two championship courses on the PGA Tour. The resort also offers family activities including a water park, and organized outdoor children's activities. A phenomenal discounted rate of \$229.00 per night as well as a reduced \$10.00 resort fee is being offered to Meeting attendees.

The 2015 Meeting follows the progression of a complex commercial property insurance claim involving a suspicious fire from submission of the claim through appeal. The program will cover all aspects of the claim including investigation, adjustment, coverage determination, and ensuing litigation. A well rounded group of presenters will address topics ranging from cause and origin investigations to adjustment of business interruption losses to bad faith and much more. The Meeting begins on Thursday evening with a Welcome Reception, followed by an informal Group Dinner along the San Antonio Riverwalk. On Friday and Saturday, we will explore the issues encountered by insureds and insurers and their representatives in a hypothetical claim fact pattern. The Meeting will close with a candid discussion of ethical considerations unique to complex commercial property insurance claims.

Our distinguished group of speakers is comprised of seasoned practitioners, judges, industry professionals and experts. Our presenters are engaging, insightful, and enthusiastic about discussing each aspect of the commercial property insurance claim, from submission of the claim to the insurer to trial of issues that cannot be resolved without litigation.

In addition to participating in interactive presentations and discussions, Meeting attendees will have several opportunities to participate in networking events designed to bring together professionals from all aspects of the property insurance industry, including dinners, and our infamous annual golf tournament. These are wonderful opportunities for first time attendees, as well as for return attendees to re-connect with friends and colleagues.

We look forward to a wonderful Meeting. See you there!

Johnathan C. Lerner

Property Insurance Law Committee Chair
Lerner Arnold & Winston LLP
New York, NY

Stacey P. Stracener

Program Co-Chair
Carroll Warren & Parker PLLC
Jackson, MS

Sean F. McAloon

Program Co-Chair
Rivkin Radler LLP
Uniondale, NY



PROGRAM AGENDA

THURSDAY, MAY 7, 2015

- 12:00 P.M. - 6:00 P.M. **REGISTRATION**
- 6:00 P.M. - 7:00 P.M. **WELCOME RECEPTION**
*ALL ARE WELCOME TO ATTEND. LIVE MUSIC!
- 7:00 P.M. - 10:00 P.M. **GROUP DINNER AT THE SAN ANTONIO RIVERWALK**
DUTCH TREAT—TRANSPORTATION PROVIDED

FRIDAY, MAY 8, 2015

- 7:00 A.M. - 12:00 P.M. **REGISTRATION**
- 7:00 A.M. - 7:30 A.M. **CONTINENTAL BREAKFAST**
- 7:30 A.M. - 7:35 A.M. **WELCOME AND ANNOUNCEMENTS**

Michael W. Drumke
TIPS Chair 2014-2015
Swanson, Martin & Bell, LLP
Chicago, IL

Johnathan C. Lerner
Property Insurance Law
Committee Chair
Lerner Arnold & Winston LLP
New York, NY

Sean F. McAloon
Program Co-Chair
Rivkin Radler LLP
Uniondale, NY

Stacey P. Stracener
Program Co-Chair
Carroll Warren & Parker, PLLC
Jackson, MS

FROM CLAIM TO VERDICT: LITIGATING THE COMPLEX COMMERCIAL PROPERTY INSURANCE CLAIM

All speakers were provided the same hypothetical claim fact pattern and each panel will address issues contained in the fact pattern during their presentations. A copy of the fact pattern will be provided in the course materials and available at the Meeting.

- 7:35 A.M. - 8:15 A.M. **SUBMISSION AND INITIAL ADJUSTMENT OF THE CLAIM**

This session will explore initial issues for policyholders and their brokers to consider before submitting a claim, such as policy language regarding notice of loss, policy conditions, sublimits, deductibles, waiting periods, the statute of limitations, contractual suit limitations periods, and engaging a public adjuster. This session will also provide an overview of insurers' initial adjustment of the claim, from reservation of rights, and requests for information and documentation of the loss, and the determination of scope and amount of property damage.

Harvey Goodman, *Goodman-Gable-Gould, Adjusters International*, Rockville, MD

Mark Therrien, *Rex Andrews & Associates, Inc.*, Houston, TX
Matthew B. Weaver, *Ver Ploeg & Lumpkin*, Miami, FL

8:15 A.M. – 9:00 A.M.

INVESTIGATION OF THE CLAIM

This session will provide a comprehensive look at the investigation of a commercial fire claim including the retention of cause and origin and related experts, the role of Special Investigation Units, NFPA-921 and the gathering and preservation of evidence. This session will also address the adjustment of business interruption losses.

David Elmore, *Matson, Driscoll & Damico, LLP*, Reston, VA
Joseph R. Toscano, *IAAI-FI,CI, Jack Ward Fire Consultants, LLC*
North Haven, CT
Michael A. Troisi, *Rivkin Radler LLP*, Uniondale, NY

9:00 A.M. – 9:30 A.M.

POLICYHOLDER'S DUTY TO COOPERATE, EXAMINATIONS UNDER OATH, AND OTHER POLICY REQUIREMENTS

This session will address the policyholder's duty to cooperate, including providing documentation and appearing for an Examination Under Oath (EUO), and the role of counsel in conducting the EUO and assisting in the insurer's investigation. This session will also explore the differences between an EUO and a deposition.

Mindy M. Medley, *Clausen Miller*, Chicago, IL
Brenda Sauro, *Sauro & Bergstrom, PLLC*, Woodbury, MN

9:30 A.M. – 10:00 A.M.

THE CLAIM DETERMINATION

This session will explore the insurer's process in making a coverage determination on the claim, including counsel's role in preparing the coverage opinion, communications to the policyholder about the insurer's coverage position and basis for denial, as well as various state statutory deadlines.

John V. Garaffa, *Butler Pappas*, Tampa, FL
Jonathan R. MacBride, *Chartwell Law Offices*, Philadelphia, PA
Darren E. Sinofsky, *Hartford Steam Boiler*, Hartford, CT

10:00 A.M. – 10:10 A.M.

BREAK

10:10 A.M. – 10:50 A.M.

BAD FAITH AND INSURED'S REQUEST FOR RECONSIDERATION OF THE CLAIM DETERMINATION

This session will address concerns involving bad faith claim handling, including delay by the insurer and improper denials. This session will also address the insurer's response for reconsideration of the denial and *White* waiver agreements to facilitate settlement negotiations.

Melissa M. D'Alelio, *Robins Kaplan LLP*, Boston, MA
Meredith Murphy, *FM Global*, Johnston, RI
Kyle A. Sturm, *Ball Janik LLP*, Portland, OR

10:50 A.M. – 11:20 A.M.

COMMENCEMENT OF LITIGATION BETWEEN THE INSURER AND POLICYHOLDER

This session will explore considerations prior to commencing litigation, including requests to extend suit limitation periods, venue considerations, initiating declaratory judgment actions, and counterclaims for coverage and bad faith by the policyholder.

Alexandra Markov, *Carroll Warren & Parker PLLC*, Jackson, MS
Christina Phillips, *Childress Duffy*, Chicago, IL

11:20 A.M. – 12:00 P.M.

DISCOVERY PROCESS FOR A COMPLEX CLAIM

This session will include perspectives from both an insurer and the policyholder regarding discovery devices and techniques utilized in the litigation of a complex commercial claim.

Gary M. Pappas, *Carlton Fields Jordan Burt*, Miami, FL
Frank Winston, *Lerner, Arnold & Winston, LLP*, New York, NY

1:30 P.M.

GOLF TOURNAMENT (Ticketed Event)

7:30 P.M. – 10:00 P.M.

CASINO NIGHT DINNER (Ticketed Event)

SATURDAY, MAY 9, 2015

7:00 A.M. – 12:00 P.M.

REGISTRATION

7:00 A.M. – 7:30 A.M.

CONTINENTAL BREAKFAST

7:30 A.M. – 8:00 A.M.

SUMMARY JUDGMENT MOTIONS

This session will address preparation, drafting and oral argument of summary judgment motions in the litigation of a complex commercial fire insurance claim.

Matthew Fortin, *Foran Glennon*, Chicago, IL
Shannon M. O'Malley, *Zelle Hofmann*, Dallas, TX

8:00 A.M. – 8:30 A.M.

MOTIONS IN LIMINE AND VOIR DIRE

This session will address typical pretrial motions the parties may wish to make in the litigation of a complex commercial fire insurance claim including motions to disqualify experts or limit the admission of evidence. The session will also address strategies to use during voir dire of potential jurors.

Jonathan D. Mutch, *Robins Kaplan Miller LLP*, Boston, MA
Hon. John F. Lakin, *12th Judicial Circuit Court of Florida*, Sarasota, FL

8:30 A.M. – 9:00 A.M.

OPENING STATEMENTS

This session will address effective techniques in opening statements to introduce the themes and narratives of property damage litigation discussed in the earlier sessions to the jury. This session will also address techniques for a party to introduce disadvantageous facts to the jury early in the trial to mitigate their impact.

Gene Killian, Jr., *The Killian Firm, P.C.*, Iselin, NJ
Myles A. Parker, *Carroll Warren & Parker PLLC*, Jackson, MS

9:00 A.M. – 9:30 A.M.

PRESENTING AND CROSS-EXAMINING WITNESSES IN A BAD FAITH TRIAL

This session will address how to effectively prepare and cross-examine both party and expert witnesses in a trial involving a first-party property insurance claim and allegations of bad faith against the insurer.

Andrew P. Slania, *Doyle Raizner LLP*, Houston, TX
James R. Swinehart, *Clausen Miller*, Chicago, IL

9:30 A.M. – 10:00 A.M. **PRESENTING EVIDENCE OF CONSEQUENTIAL DAMAGES AND PUNITIVE DAMAGES**

This session will address issues regarding evidentiary burdens and elements that must be proven to sustain a claim for consequential and/or punitive damages in a first-party insurance case in different jurisdictions.

Bob Rutter, *Rutter & Russin, LLC*, Cleveland, OH
Jennifer Gibbs, *Zelle Hofmann*, Dallas, TX

10:00 A.M. – 10:15 A.M. **BREAK**

10:15A.M. – 11:00 A.M. **CLOSING ARGUMENTS**

This session will address effective techniques in closing arguments for the plaintiff and the defendant in the litigation of a first party property damage claim.

Michael W. Duffy, *Childress Duffy*, Chicago, IL
Donald W. Carlson, *Carlson, Calladine & Peterson LLP*
San Francisco, CA

11:00 A.M. – 11:30 A.M. **THE APPEAL**

This session will provide a comprehensive overview of issues regarding an appeal of the trial verdict in a first party property damage case, including preserving the trial record, identifying reversible error, federal appellate practice, drafting briefs and oral argument.

Adina R. Bergstrom, *Sauro & Bergstrom, PLLC*
Woodbury, MN
Letoyia Brooks, *McKenna Long & Aldridge LLP*, Atlanta, GA
Hon. James E. Graves, Jr., *U.S. Court of Appeals for the Fifth Circuit*, Jackson, MS

11:30 A.M. – 12:30 P.M. **ETHICAL CONSIDERATIONS IN SETTLEMENT AND MEDIATION OF A COMPLEX COMMERCIAL FIRE CLAIM**

This session will explore ethical considerations and issues regarding settlement and mediation of a complex commercial fire insurance claim.

Hon. David R. Strawbridge, *U.S. Magistrate Judge for E.D. Pennsylvania*, Philadelphia, PA
Jay M. Levin, *Reed Smith*, Philadelphia, PA
Richard D. Gable Jr., *Butler Pappas*, Philadelphia, PA

12:30 P.M. – 2:00 P.M. **PROPERTY INSURANCE LAW COMMITTEE BUSINESS LUNCH MEETING**
ALL ARE WELCOME TO ATTEND

REGISTRATION FORM

ABA Tort Trial & Insurance Practice Section (TIPS)

From Claim to Verdict: Litigating The Complex Commercial Property Insurance Claim Insurance Law Committee Annual Spring CLE Meeting

May 7-9, 2015 – JW Marriott San Antonio Hill Country
Resort & Spa, San Antonio, TX

Registration Deadline: April 16, 2015 – Hotel Deadline: April 16, 2015

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

Are you attending your first TIPS PILC CLE Program? Yes No

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

REGISTRATION FEES:

	On or Before <u>4/16/15</u>	After <u>4/17/15</u>	QTY	TOTAL
Registration Fee per TIPS Member	\$550	\$575	___	\$ ___
ABA Member	\$650	\$675	___	\$ ___
General Attendee	\$700	\$725	___	\$ ___
Insurance Company/ Government Employee	\$300	\$325	___	\$ ___
Law Student	\$200	\$200	___	\$ ___

Social Events

Thursday Opening Reception	Included	Included		
Friday Casino Night Dinner	\$100	\$100	___	\$ ___
Friday Golf Tournament <i>(Includes green fees and cart rental)</i>	\$217	\$217	___	\$ ___

MATERIALS

I will not be able to attend the 2015 ABA PILC Spring Meeting,
but wish to order a copy of the materials \$125 ___ \$ ___

TOTAL PAYMENT

\$ ___

PAYMENT INFORMATION

Check (made payable to the ABA) American Express MasterCard VISA

CREDIT CARD NUMBER EXPIRATION DATE

SIGNATURE

THREE WAYS TO REGISTER

1. ONLINE:
www.americanbar.org/tips

2. MAIL:
American Bar Association
Attn: Service Center-Meeting/Events Registrations
Code IL1505
321 North Clark Street
18th Floor
Chicago, IL 60654

3. FAX:
312/988-5850

GENERAL INFORMATION

Registration Deadline: April 16, 2015

Hotel Deadline: April 16, 2015

Advance Registration

Visit the TIPS Property Insurance Law Committee Annual Spring CLE Meeting entitled **"From Claim to Verdict: Litigating The Complex Commercial Property Insurance Law"** website to register at www.americanbar.org/tips or complete the registration form included in this brochure.

The registration fee includes admission to the program, course materials, continental breakfast, breaks, and reception. If you wish to have your name appear on the pre-registration list distributed at the program, **ALL** registration forms must be received no later than the registration deadline of April 16, 2015. Registration reservations will be confirmed in writing within 10 business days.

On-Site Registration

On-site registrations will be accepted if space is available. Call Ninah F. Moore at 312/988-5498 or email moore@americanbar.org, 72 hours prior to the program to confirm that space is available. On-site registrants must pay the program fee by credit card or check made payable to the American Bar Association. A \$25 fee will be charged to individuals registering on-site.

Cancellation Policy

No registration fee refunds will be granted for cancellations received after **April 16, 2015**. In order to receive a refund (less a \$50 administrative fee), the ABA must receive written cancellation by **April 16, 2015**. Registrants who are unable to attend may send a substitute or will receive course materials in lieu of a refund.

Hotel Information

For Reservations call 210/276-2500

A limited number of rooms have been blocked for program registrants of the ABA Tort Trial & Insurance Practice Section Property Insurance Law Committee Meeting at the JW Marriott San Antonio Hill Country Resort & Spa, 23308 Resort Parkway, San Antonio, TX 78261 for a hotel room rate of \$229.00 single/double plus 16.75% tax, plus \$10.00 Reduced Resort Fee. For reservations, please call the hotel directly at 210/275-2500. The room block will be held until exhausted or until **Thursday, April 16, 2015 at 5:00 p.m. (CST)**. After the meeting specified hotel deadline, reservations will be confirmed based on availability. Please refer to the ABA Tort Trial & Insurance Practice Section Property Insurance Law Committee 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 or deposit check for one night's room and tax. Individuals with guaranteed reservations must cancel their reservations 48 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.

Airline Information

ABA Negotiated Airfare Discounts-Available Online!

With ABA Orbitz for Business*, you can automatically obtain ABA negotiated airfare discounts for travel to ABA Meetings. ABA Orbitz for Business enables you to purchase the best airfare at the time of booking by providing you with the ability to search for and compare fares from virtually every airline serving the destination.

Reservations with ABA Orbitz for Business can be made online or offline. For offline reservations, call 877-222-4185. ABA Orbitz for Business is available online via ABA

Travel Services*. ABA airfare discounts on some carriers may also be obtained by purchasing your tickets under the ABA Discount Codes directly from the airline or through your travel agent.

American Airlines ABA Discount only available at ABA Orbitz for Business

United Airlines 800-426-1122 Agreement Code: **414489** / Z Code: **ZSZU** Discount available at www.united.com Online Discount Code: **ZSZU414489**

Delta Airlines 800-328-1111 ABA File Meeting Code Domestic: **NMKEJ** ABA File Meeting Code International: **NMJHL**

Discount available at www.delta.com Online Meeting Event Code DOM: **NMKEJ** INTL: **NMJHL**

*A *Travel Profile* is required when booking airline reservations with ABA Orbitz for Business, visit www.americanbar.org/travel for more information.

CLE Information

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 9 CLE credit hours (including 1 ethics hour) in 60-minute states, and 10.8 credit hours (including 1.2 ethics hours) in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit www.americanbar.org/tips or contact Ninah Moore at 312/988-5498 two weeks prior to the conference for confirmation of the number of CLE credit hours requested by the ABA or credits approved by any particular state.

ABA-TIPS has partnered with CEU Institute to provide CE Credit for licensed adjusters in all states with a CE requirement. Credit hours awarded are based on state review and approval. For more information about CE accreditation, please contact Ninah Moore at ninah.moore@americanbar.org, 312/988-5498.

Membership Information

For more information about membership in the ABA or the Tort Trial & Insurance Practice Section (TIPS), please visit us online at http://www.americanbar.org/groups/tort_trial_insurance_practice/membership.html or call 1-800-285-2221. Membership in TIPS includes three industry-leading periodicals, discounts of up to 20% on many TIPS CLE programs, and other career and practice-enhancing benefits. Join TIPS today!

Persons with Disabilities

Services for persons with disabilities are available. If special arrangements are required for an individual to attend this program, please notify the ABA promptly at 312/988-5498. Reasonable advance notice is requested.

Get Connected With TIPS!

Information on this and other TIPS CLE programs is available online at www.abanet.org/tips. Visit us and get connected!

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 among 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 www.americanbar.org/tips or contact Michael McCarthy at 312-988-5585.



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

Save the Date!

The TIPS Section Conference

Join your colleagues for the premier CLE conference for insurance defense, corporate, and plaintiffs attorneys.

April 29-May 1, 2015
The Ritz-Carlton
Philadelphia, PA

This inaugural event will feature:

- Over 24 hours of top-notch CLE programming, including three hours of ethics credit, to meet all of your educational needs
- Practice area-specific CLE tracks featuring premier speakers including judges and in-house counsel
- Numerous opportunities to network with insurance defense, corporate and plaintiffs attorneys, judges and local lawyers at events including the Leadership in Action Luncheon and Gala Dinner at the Constitution Center
- Substantive committee meetings and social events
- Specialized practical CLE for all attorneys including young lawyers and judges
- Philadelphia! Where American law began

For more information visit americanbar.org/tips.

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