

WELCOME: SEASIDE CLE

On behalf of the Gulfcoast Fidelity & Surety Institute, and its host firms, Mills Paskert Divers, P.A., Strasburger & Price, LLP, and Krebs Farley & Pelleteri, PLLC, we are excited to invite you to join us for the program's thirteenth anniversary. As our past attendees will attest, the GFSI program is a unique professional and personal experience for the attendees. In addition to timely and informative continuing legal education programs by recognized experts and leaders in the industry, the setting in Boca Grande, Florida offers a venue for our Institute that is both entertaining and beautiful.

THE PROGRAM

Our program this year is nearly equally divided between surety, fidelity, and general/ethical topics. The programs this year, as always, aim to provide cutting edge CLE and CE programs from both a legal and practical perspective. In keeping with our past programs, there will also be an ethics component that will address unique ethical issues faced by fidelity and surety practitioners.

As the country continues to emerge from the economic crisis that began in 2008, the fidelity and surety industries are faced with a number of emerging issues, many of which have been seen before following previous economic downturns, but each of which contains new facets particular to today's economic climate.

For example, on the fidelity side, there will be a timely discussion of fidelity claims by the FDIC, which are again multiplying in the wake of the financial crisis and the hundreds of resulting bank failures around the country. This presentation will discuss the history of financial crises and the FDIC, and compare and contrast the current wave of FDIC claims with similar instances in the past and discuss other issues pertinent to such claims. Another fidelity presentation will focus on the issue of how and when employees' knowledge is imputed to the insured for purposes of termination of coverage, discovery of loss, and other coverage issues. The actions, omissions, conduct, and representations of agents will be discussed in another fidelity presentation, which will include analysis of how agents' actions may impact fidelity coverage issues and claim handling for both the insured and insurer.

From a surety perspective, this year the Institute will feature a presentation on a frequently asserted, but infrequently litigated surety defense: material change to the underlying contract. This presentation will address both the legal bases of the defense and the strategic and practical issues involved in its assertion and litigation. A presentation on subcontractor bonds will also be included this year, addressing the conflict between a contractor's right to supplement and the surety's right to complete when the principal on such a bond defaults. Another surety topic will be the issue of successor obligees, including who is considered a proper successor obligee, and defenses particular to claims by successor obligees. Finally, one presentation will examine changes in courts' view of sureties' attempts to enforce 'pay if paid' clauses in construction contracts, with a particular focus on variations in the law based on public vs. private work, and the applicability of federal vs. state law.

Finally, more general topics will be addressed in two presentations. One will focus on the ethical implications of litigation holds on fidelity insurers and sureties. The other will address the recent changes to Federal Rule of Civil Procedure 26, relating to the discoverability of communications with testifying experts, and how such changes will alter standard practices in federal fidelity and surety litigation.

As always, the program is designed to be fast-paced, interactive, and geared toward the experienced fidelity and surety practitioner. The written materials are designed to be comprehensive, and to provide a resource companion on each of the topics presented, not only to the Institute's attendees, but also for attendees' colleagues at home.

NETWORKING ACTIVITIES

Tarpon are some of the most exciting sport fish in the world, weighing up to a hundred and fifty pounds and never giving up without a fight, which often includes amazing above-water acrobatics. And Boca Grande, Florida, the Institute's home, is the premiere tarpon fishing destination in the world. So as is the tradition, your hosts have arranged for two tarpon fishing expeditions during the Institute. All attendees can be assured of the chance to unleash their own inner sports fisherman or woman by trying to reel in their own trophy tarpon, with trophies awarded to the best anglers.

Your hosts look forward to providing you with an experience at this year's Institute that is both educational and personally rewarding, and we can't wait to see you in Boca Grande this June.

-Justin Melkus and Mike Keeley, Program Chairs

GENERAL INFORMATION

REGISTRATION FEE

All inclusive registration fee of \$295.00 includes:

Admission to all programs and social events

Conference materials for all sessions

Meals & lodging: May 31 - June 3

Welcome reception

Awards dinner

SCHOLARSHIPS AVAILABLE

GFSI maintains a scholarship fund. To take advantage of this benefit, simply check the scholarship request box on the registration form and your registration fee will be waived.

HOUSING

GFSI has arranged for furnished condominiums at the Boca Grande Club, complete with a living area and kitchen.

CLE CREDIT

CLE Accreditation has been requested for the conference. Certificates of attendance will be available at the conclusion of the conference.

CE CREDIT

We are requesting CE credit for Texas and Florida, which have reciprocity with many other states. Upon request, we will request certificates in other states, provided we have enough advance notice.

TRANSPORTATION

We do our best to arrange for carpooling from Tampa International Airport. If interested, please let us know your flight information.



LAST NAME FIRST NAME M.I.

NAME AS YOU WISH IT TO APPEAR ON NAME BADGE

FIRM / COMPANY

ADDRESS

CITY STATE ZIP

BUSINESS PHONE BUSINESS FAX

E-MAIL ADDRESS

SCHOLARSHIP REQUESTED

MAIL
Strasburger & Price, LLP
GFSI 2012 Conference
901 Main Street
Suite 4400
Dallas, TX 75202

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214.659.4121

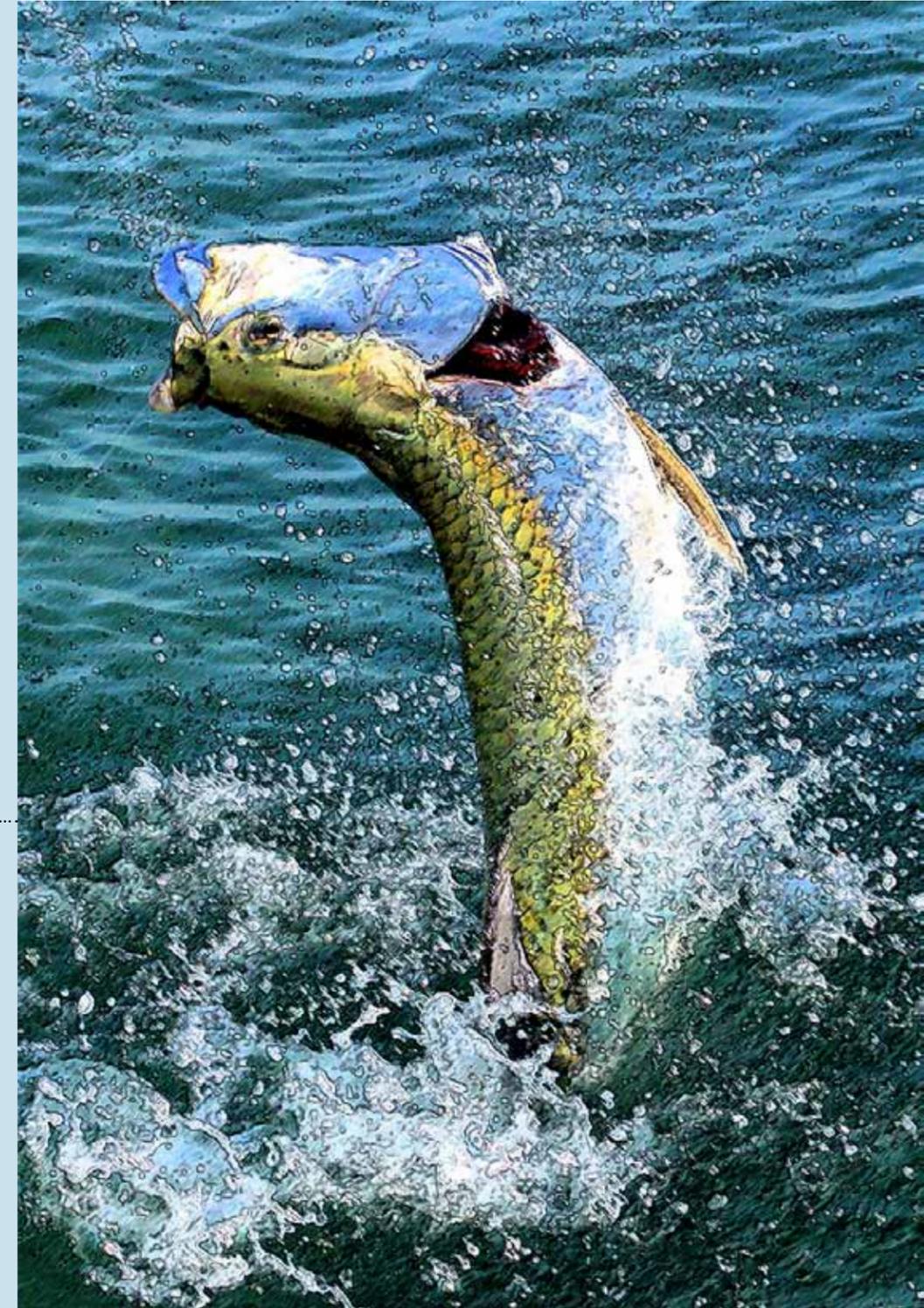
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QUESTIONS
Please contact Marianna
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14th ANNUAL CONFERENCE

MAY 31 - JUNE 3, 2012



GULF COAST FIDELITY & SURETY INSTITUTE
BOCA GRANDE CLUB • BOCA GRANDE, FLORIDA

CONFERENCE SCHEDULE

THURSDAY, MAY 31

- 2:00 p.m. – 5:00 p.m. Conference Registration – [Hospitality Suite](#)
5:00 p.m. – 6:45 p.m. Welcome Reception – [Hospitality Suite](#)
7:00 p.m. – 9:00 p.m. Dinner & Conference Orientation – [Temptation Restaurant](#)
9:00 p.m. Hospitality Suite Open
11:00 p.m. – 3:00 a.m.* [Tarpon Fishing – Boca Grande/Charlotte Harbor](#)

FRIDAY, JUNE 1

- 11:00 a.m. – 4:00 p.m. CLE Presentations – [Boca Grande Club, Dunes Room](#)
5:00 p.m. – 6:00 p.m. Member Appreciation Reception – [Hospitality Suite](#)
6:15 p.m. Dinner – [Pink Elephant Restaurant](#)
8:30 p.m. Hospitality Suite Open

SATURDAY, JUNE 2

- 4:30 a.m. – 7:30 a.m.* [Tarpon Fishing – Boca Grande/Charlotte Harbor](#)
12:00 p.m. – 2:00 p.m. Lunch, CLE Review and Discussion – [Cabbage Key](#)
2:00 p.m. – 6:30 p.m. On Your Own – [Boca Grande Club, Poolside](#)
7:30 p.m. Awards Dinner – [Boca Grande Clubhouse, Upper Deck](#)
10:00 p.m. Hospitality Suite Open

SUNDAY, JUNE 3

- 7:00 a.m. – 10:00 a.m. Breakfast and Departure

*Times subject to change dependent upon fishing conditions. Approximate departure from Boca Grande Club 15 minutes in advance of times shown.

Strasburger
ATTORNEYS AT LAW

Strasburger & Price, LLP, www.strasburger.com



**Mills Paskert
Divers**

ATTORNEYS AT LAW

TAMPA • ATLANTA

Mills Paskert Divers PA, www.mpdlegal.com

DETAILED SCHEDULE

THURSDAY, MAY 31

- 2:00 p.m. – 5:00 p.m. Conference Registration – [Hospitality Suite](#)
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7:00 p.m. – 9:00 p.m. Dinner & Conference Orientation – [Temptation Restaurant](#)
9:00 p.m. Hospitality Suite Open
11:00 p.m. – 3:00 a.m.* [Tarpon Fishing – Boca Grande/Charlotte Harbor](#)

FRIDAY, JUNE 1

- 11:00 a.m. – 12:00 p.m. Working Lunch – [Boca Grande Club, Dunes Room](#)
11:15 a.m. – 11:25 a.m. Opening Remarks
Justin Melkus and Mike Keeley, Program Chairs
11:25 a.m. – 11:50 a.m. **You've Really Got a Hold On Me: Litigation Holds and Their Consequences**
Justin P. Melkus, Strasburger & Price, LLP

A litigation hold is simply a communication within a business organization ordering that all information, paper and digital, relating to the subject of a dispute being addressed by a current or impending litigation be preserved for possible production in the litigation. A party's failure to timely impose a litigation hold can result in court-ordered sanctions, including both monetary sanctions and the imposition of adverse inference charges relating to the information destroyed because an effective litigation hold was not put in place in a timely manner. As sophisticated business entities frequently involved in litigation, fidelity insurers and sureties cannot afford to take the litigation hold requirement lightly. From an ethical perspective, this paper will examine the law on litigation holds and potential sanctions for failing to implement them effectively, and will provide practical advice for fidelity insurers, sureties, and their counsel with respect to litigation holds and related e-discovery matters.

- 11:50 a.m. – 12:15 p.m. **Imputed Knowledge: Knowing What One Refuses to Discover**
Seth Mills & Kevin Mekler, Mills Paskert Divers, PA

Despite recent legal trends imputing "personhood" to corporations in a wide variety of circumstances, a corporation is not a literal person. Rather, it can only act through its employees and other representatives. Likewise, it can only know what such individuals know. The circumstances under which an insured corporation's employees' and representatives' knowledge is imputed to the insured as an entity is important to fidelity coverage in a number of ways. This presentation will deal with how and when employees' or other representatives' knowledge is imputed to an insured for purposes of early termination of coverage, discovery, and other coverage issues.

- 12:15 p.m. – 12:30 p.m. Break

- 12:30 p.m. – 12:55 p.m. **The Incredible Shrinking 'Pay If Paid' Clause: Enforceability Issues for the Contractor and the Surety**
Marc Domres, Krebs, Farley & Pelleteri, PLLC

This presentation will focus on the continuing judicial trend to weaken the enforceability of 'pay if paid' provisions in construction contracts, especially as concerns a surety's enforcement of the provision. The presentation will also address courts' various interpretations of the provision in different contexts, including (1) whether the project at issue is a public or private work, and (2) whether the project is governed by federal or state law.

- 12:55 p.m. – 1:20 p.m. **Here We Go Again: Claims By The FDIC**
Michael Keeley, Strasburger & Price, LLP

In the wake of the financial crisis that began in 2008, hundreds of banks have failed across the country and been taken over by the FDIC. As a result, the FDIC, seeking to recover its losses by any means necessary, is instituting dozens of fidelity claims across the country on the failed banks' behalf. But this is not the first time this has occurred. This presentation will review and contrast the three great financial crises that our country has endured, discuss the creation of the FDIC and other protective banking laws, compare and contrast the current mortgage and financial crisis with the 1980s savings and loan crisis, and discuss coverage issues insurers will have to face in handling claims pursued by the FDIC.

- 1:20 p.m. – 1:45 p.m. **The Rising Clamor of Successor Obligees: Contenders or Pretenders?**
Ty Thompson, Mills Paskert Divers, PA

Most contract performance bonds specify who may maintain claims against them to the exclusion of all others. Recognizing this dilemma, strangers to the bonds have argued that they are third-party beneficiaries, successors, or assignees of the originally-named obligees notwithstanding the "no right of action" bond provisions and without recognizing substantial unanticipated liabilities. (continued)

DETAILED SCHEDULE

FRIDAY, JUNE 1, CONTINUED

For example, imagine a scenario where turnover of condominium association control occurs while construction is still ongoing. As the "successor" to the developer, would the condominium association and/or unit owners assume the role of the developer to complete the work? When does the developer lose its rights (via "succession" to another) under its contract with its contractor, if ever? Would the contractor not have a claim against the condominium association and/or unit owners for contract damages if the developer failed to pay for the work? What if the surety completes the contractor's work after turnover? Will the condominium association be responsible for the surety's equitable subrogation claims? Established precedent answers the question in the affirmative. This presentation will address recent decisions about these issues, and discuss legal and practical approaches to the defense of such claims.

- 1:45 p.m. – 2:05 p.m. **Hope the Commission was Worth It!**
Maura Z. Pelleteri, Krebs, Farley & Pelleteri, PLLC

This presentation will discuss the actions, omissions, conduct, and representations made by an agent and how they may impact coverage issues and claim handling for the insured and insurer, including express, apparent and dual agency relationships and broker status.

- 2:05 p.m. – 2:20 p.m. **The Rules Are Changing: A Primer on Expert Discovery Under Revised Rule 26**
Keith Lichtman, Mills Paskert Divers, PA

Most federal courts have interpreted Federal Rule of Civil Procedure 26 to require the disclosure of communications between a party, including its counsel, and the party's retained, testifying experts. Thus, it has long been standard practice for counsel to communicate with experts, inasmuch as possible, face-to-face or by phone. However, recent changes to Rule 26 have rendered most written communications between counsel and retained experts immune from discovery, including draft expert reports. This presentation will examine the effect of these rule changes on the litigation practice of fidelity and surety counsel, including their interactions with testifying experts.

- 2:20 p.m. – 2:45 p.m. **Supplementation and the Surety**
David J. Krebs, Krebs, Farley & Pelleteri, PLLC

In the context of subcontractors' bonds, there exist competing interests between the contractor, who may wish to supplement the subcontractor, and the surety, who has the right to complete the work itself. This presentation will consider the conflict that arises with subcontractor bonds between the contractor's right to supplement and the surety's right to complete, including an analysis of when supplementation may violate the surety's right to control its own loss.

- 2:45 p.m. – 3:05 p.m. **When Is a Material Change Really Material**
Christopher R. Ward, Strasburger & Price, LLP

This presentation will explore the often asserted, but seldom fully litigated, material change defense, with a focus not only on the legal underpinnings supporting such a defense, but also with an emphasis on the strategic and practical issues that affect such defense.

- 3:05 p.m. – 3:20 p.m. Break

- 3:20 p.m. – 4:00 p.m. Fidelity/Surety Jeopardy

We will hold our traditional game of Fidelity/Surety Jeopardy, with answers based upon the presentations, matching the wits of all the surety and fidelity giants in attendance.

- 5:00 p.m. – 6:00 p.m. Member Appreciation Reception – [Hospitality Suite](#)
6:15 p.m. Dinner – [Pink Elephant Restaurant](#)
8:30 p.m. Hospitality Suite Open

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10:00 p.m. Hospitality Suite Open

SUNDAY, JUNE 3

- 7:00 a.m. – 10:00 a.m. Breakfast and Departure