

COMMITTEE NEWS

International Law

The Rome Statute That Creates “The International Criminal Court”

As a result of the atrocities committed both in the First and Second World War, the International Community undertook to free future generations of these crimes and this is how the world shouted “Never again” before the enormity of the lived holocaust.

Consistent with such commitment and with the Principle of Universal Jurisdiction, is that five International Commissions of Investigation and four Ad-hoc International Courts were created, these being: The International Military Tribunal to persecute the great criminals of the War of the European scene of 1945, better known as the Nuremberg and Tokyo Courts; the International Military Tribunal to prosecute the war criminals of the Far East of 1946; The International Criminal Tribunal for the Former Yugoslavia of 1993 and the International Criminal Tribunal for Rwanda of 1994.

The work of these Tribunals was limited and only partially were mechanisms for the establishment of international criminal responsibility. It is for this reason and also

[Read more on page 9](#)



María Carolina Obarrio, J.D., Ph.D.

*Secretaria General
Federación Interamericana de
Abogados*

María Carolina Obarrio, FIA member, serveD since 2008, as Secretariat of the Inter-American lawyers Foundation, doing excellent and active work. She has been Secretary



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Message from the Newsletter Editor

Dear International Law Committee Members:

We are very excited to bring you this Quarterly Newsletter, with articles on The International Criminal Court and Liability on International Ocean Shipments. We hope you find the information both interesting, fun and useful to your practice.

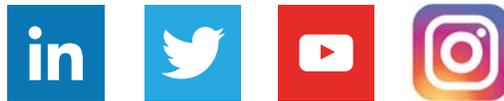
If you are interested in contributing to future newsletters, please contact me at shana.graves@lsvusa.com. Much more to come in the next few months. We are very excited that you are a part of it. ➤



Shana Graves

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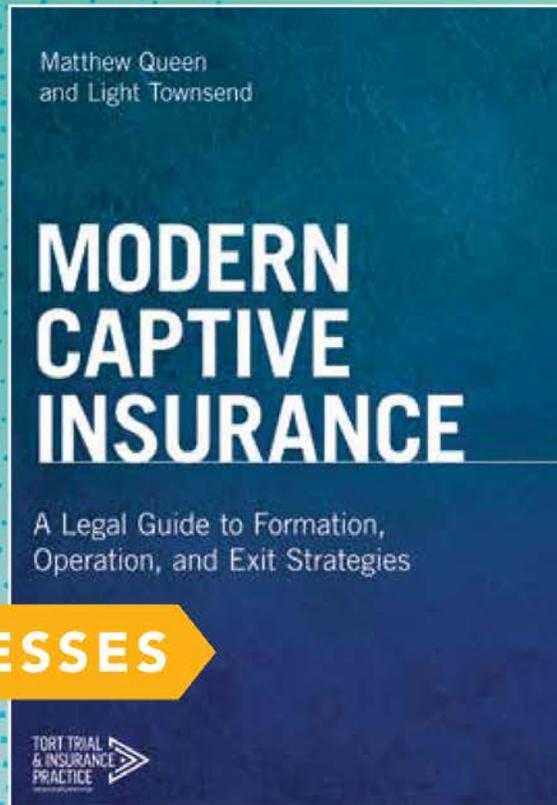
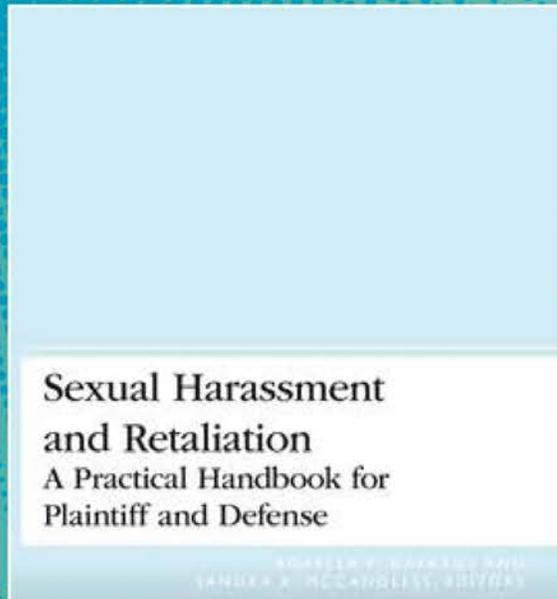
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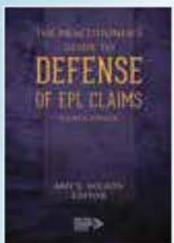
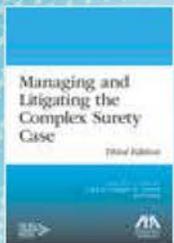
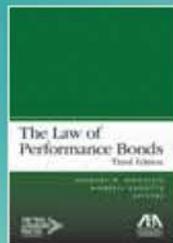
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Beware Of Limitations Of Liability On International Ocean Shipments

An important aspect of International Commerce is the possibility of limitations of liability by way of federal law and bills of lading on ocean shipments. The main statute governing these bills of lading in the United States is the Carriage of Goods by Sea Act. This statute was 46 U.S.C.A. 1301 et al. It is now cited as [46 U.S.C.A. § 30701 \(West\)](#) note § 4(5). There are also some International Laws that also address limitations of liability in Ocean shipments such as the Hamburg Rules and the Hague Convention. This statute covers cargo shipped between the United States and foreign ports. The Carriage of Goods by Sea Act has however been incorporated into bills of lading for transportation between the continental United States and Puerto Rico and the U.S. Virgin Islands and other United States territories as well as states. This type of inclusion is through a clause paramount usually contained on the back of the bill of lading.

There are some overlapping statutes such as the Shipping Act of 1984, the Harter Act and the Bill of Lading Act, however they do not deal with limitations of liability to the extent of the Carriage of Goods by Sea Act.

One of the most litigated areas of the Carriage of Goods by Sea Act is the \$500.00 per package limitation. The statute states that there is a limitation of liability of \$500.00 per package on cargo claims. Although this sounds very straight forward, it is not. There have been many cases dealing with this issue. Everything from a container to a box of clothing has been litigated on this issue. This statute was thought to be in the shipper's favor when the statute was adopted in 1936, but this is not often the case in the litigation over the last 81 years due to the increase value of commodities and the increasingly more sophisticated ways in which cargo is shipped such as by palletization.

46 USCA 1303 (5) the part of the statute dealing with this issue states the following:

(5) Amount of liability; valuation of cargo

Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.



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If the carrier is going to assert the package limitation, it must provide an opportunity for the shipper to declare a higher value. *Aetna Ins. Co. v. M/V Lash Italia*, 858 F.2d 190 (4th Cir. 1988) (4th Cir. Md. Sept. 27, 1988; *Jean-Baptiste v. New York Terminal 1, Inc.*, No. CIV.A. 13-1656 PGS, 2014 WL 495160 (D.N.J. Feb. 6, 2014)) and 2A-XVI. *Benedict on Admiralty* § 166. It is best if this is clearly designated on the bill of lading. Sometimes there is a box on the front of the bill of lading. Very few shippers will take advantage of this opportunity to declare a higher value. Marine cargo insurance can often be purchased through the ocean freight forwarder or Non-Vessel Operating Common Carrier. These entities are often used by shippers to book cargo with ocean carriers. The Non-Vessel Operating Common Carrier is also a carrier and therefore can include a \$500.00 per package limitation on its bills of lading. A Non-Vessel Operating Common Carrier typically acts as a consolidator for the cargo and is a carrier that does not operate the actual ship and is licensed by the Federal Maritime Commission.

46 USCA 1304 (5) also states:

By agreement between the carrier, master, or agent of the carrier, and the shipper, another maximum amount than that mentioned in this paragraph may be fixed: Provided, that such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

If the package limitation does not apply, then the invoice value is often used to compute damages. Replacement value has also been used in some instances when the item can be quickly replaced with no damages due to a loss of market. Fair market value is another means that has been used to compute damages. 8-V *Benedict on Admiralty* § 5.15 (2017) discusses all three methods of computing damages.

A good reference as to what does and does not constitute a package is contained in 2A-XVI. *Benedict on Admiralty* § 170 which gives a list of different items such as containers, pallets, vehicles, etc. that have been considered to be a package under the Carriage of Goods by Sea Act. In this article, we will take a look at some specific situations.

There are numerous cases on what constitutes a package and/or a customary freight unit. The author was involved in a case where 2 school buses were considered to be packages. *Expeditors Int'l of Wash., Inc. v. Crowley Amer. Transp., Inc.*, 117 F. Supp. 2d 663 (S.D. Ohio 2000). This case although dealing with a domestic shipment of buses from Ohio to Puerto Rico was one in which the Carriage of Goods by Sea Act was incorporated through a clause paramount in the bill of lading which applied the Carriage of Goods by Sea Act to this domestic shipment. The Court ruled that



the most that the Plaintiff could recover for the alleged misdelivery of the buses was \$1,000.00 or \$500.00 per customary freight unit (bus). When shipping vehicles of any kind, it is a good practice to make sure the vehicle is insured or declared at a higher value. Declaring a higher value could be more expensive than purchasing insurance. Customary freight unit refers to the basis of the freight calculation. Was it one lump sum?

A recent case, [*Bristow US LLC v. Wallenius Wilhelmsen Logistics, AS*, 369 F. Supp. 3d 519 \(S.D.N.Y. 2019\)](#) held that a helicopter was subject to the \$500.00 per package limitation. This was also way below the actual of the shipped item.

Another case of interest is [*Fireman's Fund Ins. Co. v. Tropical Shipping & Const. Co.*, 254 F.3d 987 \(11th Cir. 2001\)](#) which held that a stage was a package and Tropical Shipping and Consturcion Company Ltd., the ocean carrier was only liable for \$500.00. In this case, the shipper also had 2 forms of insurance so that it could claim more than \$500.00 from the insurance carriers. This case illustrates why it is important to have insurance. Although the package limitation was used to limit the value of the stage to \$500.00, there was insurance from two different insurance carriers, one a property insurer and the other a cargo insurer to contribute considerably more to the loss. A good deal of the litigation involved the dispute between the two insurance carriers as to their respective liabilities for the loss. This shipper had coverage from 2 companies. This sometimes happens if the ocean carrier issues what are called insured bills of lading, that is the insurance is included with the freight charges, although it might not fully cover the loss. [*Fireman's Fund Ins. Co. v. Crowley Liner Servs.*, No. 08-1745\(PG\), 2011 U.S. Dist. LEXIS 92776 \(D.P.R. Aug. 16, 2011\)](#) where there was a dispute between the carrier and the insurer on a subrogation claim over whether or not the \$75,000 on the insured bill of lading was a restriction on damages.

Another case worth noting is [*Am. Home Assur. Co. ex rel. Leslie Fay Co. v. CROWLEY AMBASSADOR*, No. 01 CIV. 3605 \(PKL\), 2003 WL 328301 \(S.D.N.Y. Feb. 11, 2003\)](#) where the bill of lading indicated that the container held "22,355 pieces" of clothing, and the garments were prepackaged in sets wrapped in plastic. There was no indication of how many sets there were in the container. The court held that it had "no other viable option" than to treat the container as the "package." This was seen as an issue as to whether or not the packages can stand on their own as a fully packaged item that can be shipped on its own. Another one of the leading cases on this issue dealing with clothing is [*Fishman & Tobin, Inc. v. Tropical Shipping & Const. Co.*, 240 F.3d 956 \(11th Cir. 2001\)](#) where a master carton of clothing was held to be a package.



There are cases holding that a container is not a package such as *Tokio Marine & Fire Ins. Co. v. Nippon Express U.S.A. (Illinois), Inc.*, 155 F. Supp. 2d 1167 (C.D. Cal. 2000), *aff'd sub nom. Tokio Marine & Fire Ins. Co. v. Nippon Express U.S.A., Inc.*, 45 F. App'x 710 (9th Cir. 2002) where the bill of lading indicated that one container held 33 skids consisting of 177 pieces, and the number 1 in the column for packages and the number 33 for the skids. The skids were held to be a package. It was affirmed at *Tokio Marine & Fire Ins. Co. v. Nippon Express U.S.A., Inc.*, 45 F. App'x 710 (9th Cir. 2002). In that case, the skids were certainly a method used to prepare the cargo for shipment.

Pallets are sometimes considered to be packages. *Groupe Chegaray/V. De Chalus v. P&O Containers*, 251 F.3d 1359, 1367–70 (11th Cir. 2001) is a case where 2270 shoebox-sized corrugated cardboard cartons of perfumes and cosmetics were placed into 42 larger units, which were bound together with plastic wrap which were pallets with an additional two cartons remaining inside an eight-ton, 40-foot container. The description on the bill of lading described the contents of the container as “42 packages [said to contain] 2268 cartons + 2 ctns” of cosmetics. The Court held that each of the 42 palletized units and each of the two remaining cartons was a COGSA “package.” Pallets are another form of preparation for shipment and therefor a package. The individual cartons certainly could not have been shipped individually and placed into a container.

The bill of lading will typically have a section to fill in the number of packages. This can come into play in these cases however courts will look beyond this column.

It should be noted that the carrier cannot arbitrarily decide to apply the limitation, if the carrier knows what is actually being shipped and /or was constructively notified of the value of the shipment. *Belize Trading, Ltd. v. Sun Ins. Co. of New York*, 993 F.2d 790 (11th Cir. 1993). In other words, the shipper cannot be denied an opportunity to declare a higher value and then have a limitation imposed upon it.

The \$500.00 per package limitation can be raised as an affirmative defense. The burden is on the carrier to prove the applicability of an affirmative defense. This is an issue which if possible, should be resolved early on in a case. If a claim is going to be severely limited, then the parties will want to know that early on rather than go through considerable discovery and possible trial preparation on which the amount of recovery is limited by the \$500.00 limitation.

Another important limitation is the statute of limitations. It is only one year from the date of delivery or when delivery should have been made by the carrier. 46 U.S.C.A. 1303(6). This There are a number of cases dealing with what is a



delivery, so the attorney needs to be careful in interpreting what is delivery. This is a lot shorter than the normal four years for negligence in Florida or breach of contract actions that are 5 years on a written contract in Florida. Extensions of time can often be obtained from the ocean carrier, but you must be sure that you get the extension from the right party and it should be in writing. In fact, there could be several parties involved that are able to claim this limitation through a Himalaya clause from whom the shipper might also need to get an extension of time. These entities could include the stevedore, an agent, and even a motor carrier under a thru or Intermodal bill of lading. The ship owner could also be a party other than the carrier if the vessel is on a charter (maritime for a lease). If there is a Non-Vessel Operating Common Carrier, that entity can also assert the \$500.00 per package limitation and the statute of limitations. It can also be tricky in some instances to find out who is the correct carrier.

The package limitation might not apply if there is an unreasonable deviation. [Unimac Co. v. C.F. Ocean Serv., Inc.](#), 43 F.3d 1434 (11th Cir. 1995) and *Benedict on Admiralty Volume 8 section 5.05*. This typically could be delivery to the wrong port. A deviation however does not extend the time for filing a lawsuit under the Carriage of Goods by Sea Act.

The package limitation along with the rest of the Carriage of Goods by Sea Act can be extended to inland shipments on Intermodal bills of lading. This is typically where the carrier picks up the cargo from the point of origin to the point of destination. [Norfolk S. Ry. Co. v. Kirby](#), 543 U.S. 14, 125 S. Ct. 385, 160 L. Ed. 2d 283 (2004) and [Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.](#), 561 U.S. 89, 130 S. Ct. 2433, 177 L. Ed. 2d 424 (2010) are 2 cases dealing with extending the Carriage of Goods by Sea Act to inland shipments as opposed to the Carmack Amendment.

The Hamburg and the Hague Rules also have limitations of liability. You may see them referenced on certain bills of lading. It is easier for the carrier to just reference the Carriage of Goods by Sea Act for shipments that involve the United States. It will avoid any controversy.

The package limitation is something that shippers and their attorneys need to be aware of in international and in some domestic shipments. When handling a claim, it is necessary to ask for the entire bill of lading, both the front and the back of the bill of lading. They typically cross reference one another. The package limitation is a reason for a shipper to purchase cargo insurance which is often cheaper than declaring a higher value to the ocean carrier. ➤



Rome Statute... Continued from page 1

because criminal justice had lacked Jurisdictional Bodies of permanent worldwide scope, that the International Law Commission of the United Nations conceived the need to establish in the International Community a Permanent Criminal Court. In 1992, the UN General Assembly requested the International Law Commission to prepare a Draft Statute for an International Criminal Court.

The main background for the creation of this Court is Resolution No. 50/46 of September 11, 1995, by means of which the General Assembly of the United Nations decides to establish a Preparatory Committee for the establishment of an International Criminal Court., whose main function would be to review the draft Statute for the creation of a Permanent Criminal Court, prepared by the International Law Commission of the UN in 1994.

After a series of meetings of the Preparatory Committee, the General Assembly of the United Nations at its 52nd session. Ordinary Period of Sessions and by Resolution No. 52/160 dated December 15, 1997, convened the “Diplomatic Conference of Plenipotentiaries of the United Nations on the Establishment of an International Criminal Court”, which was held in Rome, Italy From June 15 to July 17, 1998, the Diplomatic Conference approved on July 17 the Final Act adopting the Rome Statute by which the International Criminal Court is constituted, said Act contains the vote of the States present, which It was as follows: 120 States in favor, 21 abstentions and 7 against, in that session it is decided that the Headquarters of the same be the city of The Hague, The Netherlands.

By the Statute of Rome, the International Criminal Court is a Permanent Institution with jurisdiction over natural or natural persons and not over States, having jurisdiction to know the most serious crimes of international importance, such as: genocide, the crime against humanity, war crimes and those of aggression, codifying for the first time these crimes in an organic and detailed manner and making individual criminal responsibility effective.

The Rome Statute is the result of a long evolution of the International Community to establish a Permanent Criminal Jurisdiction with competence to know international crimes, also constituting an international jurisdictional instance against impunity, also contributing to the prevention of new crimes.

Consistent with the above, it is worth noting that the International Criminal Court is, by itself, a very special jurisdiction, which will act only in the most serious cases of violations of human rights and International Humanitarian Law and in a subsidiary or complementary manner to national justice

of the branch and Argentine chapter of the FIA in the period 2008-2010 and the current administration as Deputy-Secretary.

She has been Part of the Board of Directors of the Public Bar of lawyers of the Federal Colegio Público de Abogados de la Capital and has been representative Council Member in the FIA Conference in Margarita-Venezuela, Veracruz-México among other counties.

As well as this, she worked actively as Vice President of the Committee right of communications, science and technology of the FIA; as VP in the Committee of intellectual Property; Access to Justice and women's rights.

She worked as a Judicial Mediator of the Justice of the City of Buenos Aires, Argentina.

Dra Obarrio has various publications and conferences as well as teacher training and training in alternative means of conflict resolution.

The FIA/IABA Argentine Chapter by unanimous decision and unanimous vote branch proposed the incorporation of the Obarrio Dr. as a Council Member of the FIA/IABA, is an important contribution in the institutional advancement of the FIA, who was appointed since 2011. Currently, the Dra Obarrio-January 2016 - is member of the Executive Board as Secretary General of the FIA-IABA standing out for their contributions, leadership and driving, as well as vast experience in the professional practice, as a litigator, at the same time in the area of ADR, as in the academic training lawyers on ADR; she has also practice and a vast experience as a member of local institutions



The International Criminal Court is an Agency that complements national jurisdictions, and is only competent if the State is unable or unwilling to try persons accused of these crimes. The International Criminal Court is a permanent institution, which is empowered to exercise its jurisdiction over persons with respect to the most serious crimes of international concern in accordance with its Statute and will be complementary to national criminal jurisdictions.

The Statute of Rome that creates the International Criminal Court entered into force on the 1st. July 2002, and formally installed on March 11, 2003, in its inaugural session held in The Hague, Netherlands. As of its validity, the authors of the worst crimes against humanity may be judged, thus fighting impunity. ➤

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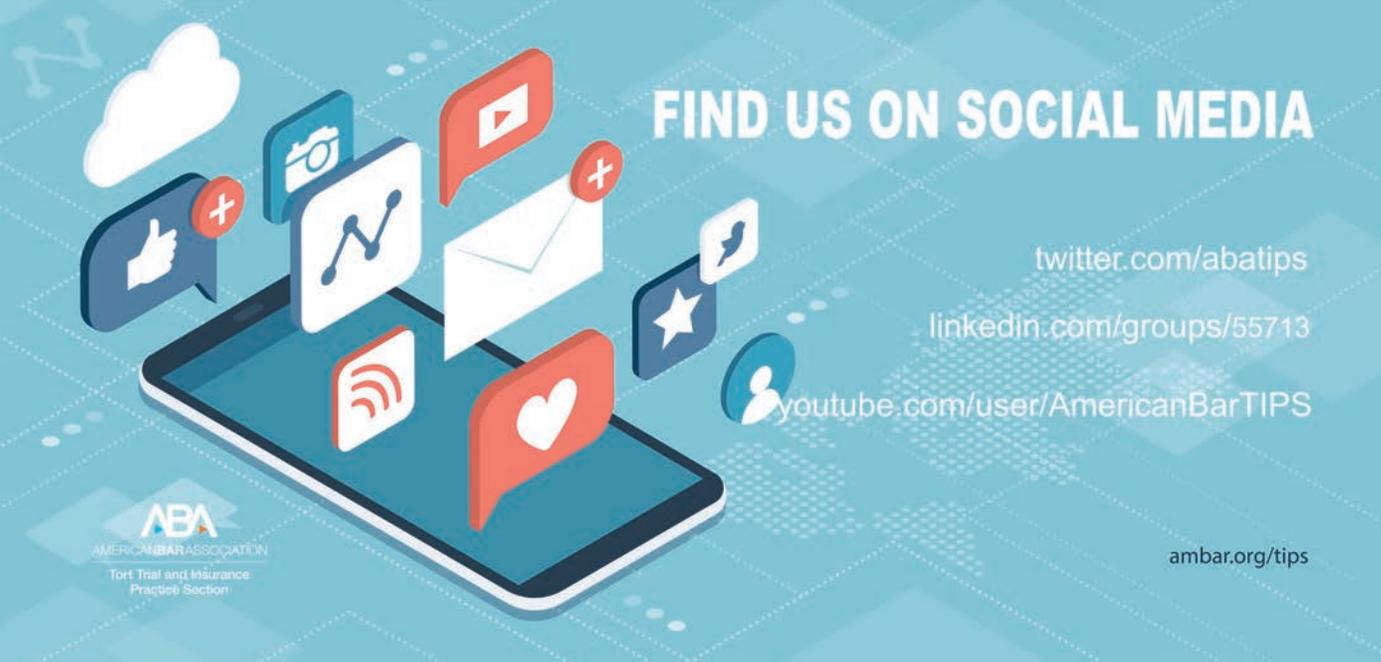


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September 19-20, 2019	Cannabis Conference Contact: Janet Hummons – 312/988-5656 Danielle Daly – 312/988-5708	InterContinental Hotel Chicago, IL
October 9, 2019	Animal Law Symposium Contact: Janet Hummons – 312/988-5656 Danielle Daly – 312/988-5708	Florida Hotel & Conference Center Orlando, FL
October 16-19, 2019	TIPS Fall Leadership Meeting Contact: Janet Hummons – 312/988-5656 Juel Jones – 312/988-5596	Grand Wailea Hotel Wailea, HI
October 24-25, 2019	Life Sciences & Litigation Program Contact: Janet Hummons – 312/988-5656 Juel Jones – 312/988-5596	Pfizer Inc. New York, NY
October 24-25, 2019	Aviation Litigation Contact: Danielle Daly – 312/988-5708	Ritz-Carlton Washington, DC
November 6-8, 2019	Fidelity & Surety Law Fall Conference Contact: Janet Hummons – 312/988-5656 Danielle Daly – 312/988-5708	Hilton Boston Back Bay Boston, MA
December 8, 2019	Insurance Regulation Conference Contact: Juel Jones – 312/988-5597	Winstead PC Austin, TX
January 16-18, 2020	Life Health & Disability Contact: Danielle Daly – 312/988-5708	Hotel Van Zandt Austin, TX
January 29-31, 2020	Fidelity & Surety Law Midwinter Conference Contact: Janet Hummons – 312/988-5656 Speaker Contact: Juel Jones – 312/988-5597	Grand Hyatt New York New York, NY
February 12-16, 2020	ABA Midyear Meeting Contact: Juel Jones – 312/988-5597 Janet Hummons – 312/988-5656	JW Marriott Austin, TX
February 20-22, 2020	Insurance Coverage Litigation Midyear Conference Contact: Janet Hummons – 312/988-5656 Danielle Daly – 312/988-5708	Arizona Biltmore Resort Phoenix, AZ

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