



## Fidelity

Hinshaw & Culbertson LLP has deep roots in the fidelity law field. Our attorneys have been practicing in the area since Hinshaw was founded in 1934, and since then we have built one of the strongest practices of its kind in the country.

We are well versed in matters involving:

- Bankers' and brokers' blanket bonds
- Commercial crime policies
- Director and officer liability policies
- Employee dishonesty policies
- Executive risk policies
- Fiduciary bonds
- Financial institution bonds
- Electronic Computer Crime policies
- Risk policies (of all types)

Our attorneys' credentials underscore the firm's commitment to this area of law. In fact, many of our lawyers have more than 20 years of experience practicing fidelity law. Additionally, several of our senior partners have served as claims and management personnel for major carriers in the industry. The result of this experience and dedication to fidelity law is not only a group of highly skilled attorneys who can handle complex matters efficiently and from a business perspective, but also myriad satisfied clients who appreciate working with lawyers who understand their business needs.

Like a boutique law firm, Hinshaw has a tight knit group of attorneys who focus exclusively on fidelity law. We bring an intense focus to our work, which some large-firm attorneys may lack. At the same time, we have attorneys nationwide who provide close support to our fidelity lawyers. This allows us to service our client's matter in any venue in which it may arise, from a small-town county court, to the U.S. federal courts. Our attorneys also have experience handling international fidelity litigation.

The breadth of our practice allows us to handle our clients' matters in whatever shape they take and whatever practice areas are involved, including banking, bankruptcy, workouts, construction, employment, secured transactions, environmental matters, securities, tax, workers' compensation, commercial litigation, collections, professional liability and virtually any other practice area that might be involved in a fidelity matter.

We are not only savvy investigators, astute coverage analysts, and tenacious negotiators and litigators, but we are also leaders in the field. We are active members of important industry forums, bar associations and trade groups, including the National Bond Claims Association, the American Bar Association,

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### Related Services

Surety



the International Association of Defense Counsel, the Defense Research Institute, and a number of local organizations throughout the country. We frequently lecture before these respected organizations, and also serve as editors of and publish articles in various treatises and journals.

Our team is regularly involved in and highly experienced in addressing an array of fidelity-related issues, including the following:

- Direct loss, causation and third-party liability
- Manifest intent to cause loss
- Alter ego issues
- Limits of insurance and non-stacking provisions
- Late notice
- Loan losses
- Computer fraud
- Forged endorsements
- Discovery of loss and termination of coverage
- On-premises issues
- Loss valuation
- Key exclusions, including inventory, profit/loss and indirect loss
- Policy rescission

In complex financial and computer fraud cases, the full scope of the loss is not always clear. In fact, determining whether a loss has actually occurred may prove challenging. That is why the first step in any well-managed fidelity case requires a detailed investigation and analysis of the alleged loss. We have vast experience doing the legwork necessary to investigate the most complex fidelity loss claims.

As an example, our strong investigative skills helped save one of our clients millions of dollars in a complex international fraud case involving a South American corporate insured. Because the prime witness was also a suspect in an ongoing criminal investigation and was thus unable to talk to us, we had to uncover the facts independently. We quickly assembled a team of our attorneys, who traveled to the company's Brazil facility and reviewed and translated thousands of documents in an extremely short period of time. As a result, we determined that the size of the loss was millions of dollars less than was claimed by the insured.

Another claim illustrating the complexity of the matters we have successfully handled involved an executive of a public company who was embezzling more than \$10 million from his employer, the insured, while simultaneously cooperating with the FBI's investigation of corporate misconduct by his employer. The claim involved tracing monies deposited into banks in Switzerland and various places in the Caribbean; delicate dealings with the FBI and the U.S. Attorney's Office; and handling an employment discrimination assertion by the executive. Our fidelity lawyers were able to resolve the claim without litigation.

If we cannot do the investigation ourselves, we know the right people for the job. We regularly work with leading experts in various fields—information technology, forensic accounting, finance, banking, securities and others whose expertise is needed to develop all relevant facts.

Once we thoroughly investigate and properly document an alleged loss, we conduct a full analysis of all issues involved, including potential costs and exposure, and benefits of resolving the claim at various stages. First, we perform a thorough and timely review of all possible issues, claims and defenses. Then we conduct a detailed cost-benefit analysis, and explore all potential avenues for settlement. Last, and only if necessary, we prepare the matter for litigation.

Our claim analysis consists of a thorough written game plan including a coverage opinion that lays out the potential liability exposure or likelihood of recovery; identifies all possible claims, defenses and potential sources for contribution and indemnification; and summarizes the expected costs of litigation. It concludes with a proactive strategy — drawn up in close consultation with our client — that seeks to minimize the total exposure.



Our fidelity lawyers provide a comprehensive analysis of a claim and plan a course of action to respond to the loss as efficiently as possible.

Before filing or responding to any lawsuit, our skilled attorneys make it a point to explore the use of creative and cost-effective alternative dispute resolution (ADR). We are experienced in using the latest ADR techniques and have been successful in resolving many disputes without protracted litigation. However, sometimes litigation is inevitable, and in those instances Hinshaw's experienced attorneys are well armed to handle the matter.

With our heritage of litigating complex, multiparty cases and class actions in state and federal courts throughout the United States, our trial attorneys regularly handle major fidelity cases before judges and juries, and we have successfully done so in some of the most hostile jurisdictions in the country.

Our litigation experience covers the entire spectrum of matters. For example, our attorneys successfully tried a fidelity case before a federal court jury in Louisville, Kentucky. Some key issues included whether the principal had committed theft; if so, the amount of the theft; and the scope and enforceability of the inventory exclusion. The trial also featured a *Daubert* hearing on the admissibility of certain expert opinion testimony on damages. We were also victorious in the case of *Tri City Nat. Bank v. Federal Ins. Co.*, 268 Wis. 2d 785, 674 N.W.2d 617 (Wis. Ct. App. 2003), where the Wisconsin appellate court upheld the trial court's dismissal of a complaint brought by the insured to recover \$7 million it paid to settle a complaint brought by a third party for loss it sustained as the result of the dishonesty of the insured's employees. The court held that the insured had not sustained a direct loss as required by fidelity policies.

Our approach is based on our insiders' perspective. We see the big picture and are well-versed in evaluating cases on the front end. We know the industry and have an intimate understanding of our clients' business and legal needs. Our aggressive motion practice is designed to resolve cases, if possible, at the pleadings stage. Furthermore, we offer time-tested discovery practices and state-of-the-art technology resources that allow us to manage massive cases with ease.

Finally, we pride ourselves on collaborating fully with our clients. We will not make any decisions without prior consultation with our client, a detailed litigation plan and budget.

Our work does not always end at the negotiated settlement or judgment stage. Our subrogation and indemnity work focuses on reclaiming all possible amounts for our client, whether through contractual indemnification rights, subrogation or intelligent salvage efforts. And our appellate team can turn a lower court setback into an appellate court victory, or on the flipside defend a favorable judgment from attack.

We have extensive experience in all areas of subrogation and other recovery litigation. Our experienced appellate lawyers regularly appear in state and federal appeals courts throughout the country helping to establish important industry favorable precedents. For example, in *Rodriguez v. Olin Employees Credit Union*, 406 F.3d 434 (7th Cir. 2005), we convinced the U.S. Court Appeals for the Seventh Circuit to overturn existing Illinois law on the continuing violation rule. The court held that an employee's continuing conversion of checks over a seven-year period did not amount to a single injury for the purposes of the statute of limitations. Instead, the court concluded that the limitations period begins to run with the negotiation of each check — saving our client from years of exposure as a result. In *Hartford Acc. and Indemnity Co. v. Sullivan, et al* 846 F.2d 377 (7th Cir. 1988) we brought a subrogation action against two bank officers, a borrower and his attorney alleging that they had engaged in a conspiracy to defraud the insured bank. Although the trial court ruled that we had failed to establish a conspiracy and found against our client with respect to the claim against the attorney, the Seventh Circuit reversed, holding that we had proved the conspiracy and that all four defendants were liable for the loss.

## News

[Hinshaw Recognized as "Distinguished in Litigation" in BTI Consulting's Litigation Outlook 2024 Survey](#)  
November 16, 2023

[Hinshaw Partner D.L. Morriss Named One of Chicago's Notable Minority Lawyers](#)  
November 28, 2018



[Terese Drew to Be Elected to American Board of Trial Advocates Board of Delegates](#)  
August 26, 2016

[Barry MacEntee Included in Chicago Lawyer's 2015 "40 Under 40"](#)  
October 20, 2015