The 28th Annual National Institute on

Advanced ERISA Litigation

May 15-16, 2018

American Bar Association
321 North Clark Street, Chicago, IL 60654

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12.00 CLE Credit Hours have been requested from 60-minute states
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_Bredhoff & Kaiser_, Washington, DC

Jennie Arnold  
_Ledbetter Parisi LLC_, Miamisburg, OH

R. Joseph Barton  
_Block & Leviton, LLP_, Washington, DC

Mary Bortscheller  
_Cohen Milstein Seller & Toll, PLLC_, Washington, DC

Marjorie Butler, _Program Co-Chair_  
_Counsel, Office of the Solicitor, U.S. Department of Labor_, Boston, MA

Marie Casciari  
_DeBofsky, Sherman & Casciari, P.C._, Chicago, IL

Stacey Cerrone  
_Proskauer Rose LLP_, New Orleans, LA

Ruben Chapa  
_Chicago Regional Solicitor's Office, U.S. Department of Labor_, Chicago, IL

Denise M. Clark, _Program Co-Chair_  
_Clark Law Group, PLLC_, Washington, DC

Ada Dolph  
_Seyfarth Shaw_, Chicago, IL

Miguel Eaton  
_Jones Day_, Washington, DC

Benjamin Eisner, _Program Co-Chair_  
_Spear Wilderman, PC_, Philadelphia, PA

Russell L. Hirschhorn, _Program Co-Chair_  
_Proskauer Rose LLP_, New York, NY

Al Holifield  
_Holifield • Janich • Rachal • Ferrera, PLLC_, Knoxville, TN

Todd Jackson  
_Feinberg, Jackson, Worthman & Wasow LLP_, Oakland, CA
Robert A. Meyer  
*JAMS*, Los Angeles, CA

Ian Morrison  
*Seyfarth Shaw*, Chicago, IL

Robert Rachal  
*Holifield • Janich • Rachal • Ferrera, PLLC*, New Orleans, LA

Joanne Roskey  

Amanda Sonneborn  
*Seyfarth Shaw*, Chicago, IL

Thomas Tso  
*Pension Benefits Security Division, U.S. Department of Labor*, Washington, DC

Kevin Wilemon  
*Chicago Regional Solicitor’s Office, U.S. Department of Labor*, Chicago, IL

Michelle C. Yau  
*Cohen Milstein Seller & Toll, PLLC*, Washington, DC
TUESDAY, MAY 15, 2018

8:00  Registration and Networking Continental Breakfast

8:45  Welcoming Remarks and Overview from Co-Chairs
      Benjamin Eisner, Spear Wilderman, PC
      Marjorie Butler, Counsel, Boston Regional Solicitor’s Office, U.S. Department of Labor
      Denise M. Clark, Clark Law Group, PLLC
      Russell L. Hirschhorn, Proskauer Rose LLP

9:00  Class Action Litigation Strategies:  Constitutional & Statutory Standing
      This panel will explore the requirements under Article III and ERISA for a participant or beneficiary to
      have standing to sue on behalf of herself, as well as a putative class of similarly situated individuals.
      The panel will explore those issues in the context of both defined benefit and defined contribution plan
      litigation.
      For the Plaintiff:  Michelle C. Yau, Cohen Milstein Seller & Toll, PLLC
      For the Defendant:  Stacey Cerrone, Proskauer Rose LLP
      For the Plan:  Robert Alexander, Bredhoff & Kaiser
      For the Government:  Thomas Tso, Pension Benefits Security Division,
                            U.S. Department of Labor

10:00 Class Action Litigation Strategies:  Statute of Limitations
      Section 413 of ERISA has been called a series of overlapping statutes of limitations “[h]eld together by
      chewing gum and baling wire. It is a statute of limitations with a six-year prong and a three-year prong,
      which bounces back to six years when there is fraud or concealment.”  This panel will dig into issues
      surrounding the application of ERISA’s statute of limitations to class action benefit, statutory and
      fiduciary claims.  What statute of limitations applies when section 413 does not?  When does the statute
      of limitations accrue?  What is a clear repudiation?  What amounts to “actual knowledge” under ERISA
      § 413? What is fraud and concealment?
      For the Plaintiff:  Michelle C. Yau, Cohen Milstein Seller & Toll, PLLC
      For the Defendant:  Miguel Eaton, Jones Day
      For the Government:  Joanne Roskey, Plan Benefits Security Division,
                            U.S. Department of Labor

11:00 Morning Break

11:15 Class Action Litigation Strategies:  Mandatory Arbitration and Class Actions Waivers
      This panel will discuss the potential impact of the Supreme Court’s decision in Epic Systems v. Lewis
      where the Court will address whether the National Labor Relations Act precludes employers from
      requiring employees to waive their right to class proceedings despite the NLRA’s protections for
      employees engaging in “concerted activities.”  This panel also will discuss the availability of mandatory
      arbitration clauses.
      For the Plaintiff:  Todd Jackson, Feinberg, Jackson, Worthman & Wasow LLP
      For the Defendant:  Ian Morrison, Seyfarth Shaw
12:15  Discovery in Class and Complex Fiduciary Breach Actions
How do practitioners design and execute discovery plans that effectively provide sufficient information to prosecute or defend an ERISA action while balancing costs of discovery, limitations in the federal rules on depositions and written discovery, spiraling ESI costs and availability, and the need for targeted information. Subjects will include discussion of discovery in fiduciary breach cases, ESI discovery plans that incorporate search terms, agreements on costs of ESI, the emerging case law on ESI and privilege, the use of staged discovery, and the usefulness of involving IT and record keepers early in the process. The panel also will discuss how the most effectively use court oversight in the discovery process while balancing the need to work cooperatively with opposing counsel.
For the Plaintiff:  Mary Bortscheller, Cohen Milstein Seller & Toll, PLLC
For the Defendant: Ada Dolph, Seyfarth Shaw
For the Plan: Robert Alexander, Bredhoff & Kaiser
For the Government: Kevin Wilemon, Chicago Regional Solicitor’s Office, U.S. Department of Labor

1:15  Lunch

2:30  Motion for Class Certification in a Post-Walmart World
The panel will discuss the petitions for class certification, identifying and shaping the classes and subclasses in ERISA cases. The panel will discuss approaches to class determination at the pleading stage—both complaint and motion for certification with the use of hypotheticals and discussion of leading certification cases.
For the Plaintiff: Todd Jackson, Feinberg, Jackson, Worthman & Wasow LLP
For the Defendant: Miguel Eaton, Jones Day

3:30  Afternoon Break

3:45  Interlocutory Appeals
This panel will explore the tools available to appeal to a circuit court prior a final judgment, including appeals from class certification under Fed. R. Civ. P. 23(f), partial final judgments under Fed. R. Civ. P. 59, and controlling questions of law as to which there is substantial ground for difference of opinion under 28 U.S.C. § 1292(b). Practitioners will provide practical insight into the process of writing appeals and response briefs, as well as preparing for and engaging in oral argument.
For the Plaintiff: R. Joseph Barton, Block & Leviton, LLP
For the Defendant: Robert Rachal, Holifield • Janich • Rachal • Ferrera, PLLC
For the Government: Thomas Tso, Pension Benefits Security Division, U.S. Department of Labor

4:45  Adjourn followed by Networking Reception on the 24th Floor
WEDNESDAY, MAY 16, 2018

8:30  Registration and Networking Continental Breakfast

9:00  Focus Topic: Defined Contribution Plan Investment Litigation
One of the most financially significant and complicated areas of ERISA litigation involves claims against fiduciaries for alleged breach of duty regarding retirement plan investments. Fiduciary litigation over plan investments in defined contribution plans continues to expand, with cases challenging the selection of 401(k) and 403(b) plan investments, the monitoring of fees in individual account/401(k) plans, whether investments have performed substantially below their benchmarks, and the prudence of various target-date funds and default investment funds.

For the Plaintiff: Mary Bortscheller, Cohen Milstein Seller & Toll, PLLC
For the Defendant: Robert Rachal, Holifield • Janich • Rachal • Ferrera, PLLC
For the Government: Joanne Roskey, Plan Benefits Security Division, U.S. Department of Labor

10:00 Focus Topic: Service Provider Litigation
This panel will explore litigation between plans and their service providers, including for example claims for the imposition of excessive fees on participant accounts from record-keepers and investment advisors, as well as claims for improper calculation of service provider fees. The fiduciary status—or the lack of fiduciary status—of service providers will be discussed. Claims for improper and insufficient monitoring of service providers also will be explored.

For the Plaintiff: R. Joseph Barton, Block & Leviton, LLP
For the Defendant: Al Holifield, Holifield • Janich • Rachal • Ferrera, PLLC
For the Plan: Benjamin Eisner, Spear Wilderman, PC
For the Government: Ruben Chapa, Chicago Regional Solicitor’s Office, U.S. Department of Labor

11:00 Morning Break

11:15 Focus Topic: Retiree Health Benefit Litigation
Since the Supreme Court put an end to the Yard-Man inference in M&G Polymers USA, LLC v. Tackett in 2015 the volume of retiree health benefit litigation has continued to be high in both collectively-bargained and non-collectively bargained contexts. This panel will examine recent trends in retiree health benefit litigation, including the trio of 2017 decisions issued by the Sixth Circuit in the Meritor, Kelsey-Hayes Company and CNH Industrial cases. The treatment of retiree health benefits in bankruptcy matters, including Bankruptcy Code section 1114, also will be covered.

For the Plaintiff: Denise M. Clark, Clark Law Group, PLLC
For the Defendant: Stacey Cerrone, Proskauer Rose LLP
For the Plan: Jennie Arnold, Ledbetter Parisi LLC
Focus Topic: Mental Health Parity Litigation
The Mental Health Parity and Addiction Equity Act of 2008 prevents group health plans and health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits from imposing less favorable benefit limitations on those benefits than on medical/surgical benefits. This panel will explore issues in the growing area of Mental Health Parity litigation, including residential treatment exclusions as well as other plan design issues, Non-Quantitative Treatment Limitations (NQTLs), medical necessity, treatment for autism and eating disorders, standing and class issues, and remedies.

Moderator: Russell Hirschhorn, Proskauer Rose LLP
For the Plaintiff: Marie Casciari, DeBofsky, Sherman & Casciari, P.C.
For the Defendant: Amanda Sonneborn, Seyfarth Shaw
For the Plan: Jennie Arnold, Ledbetter Parisi LLC

1:15 Lunch

2:30 Mock Mediation
A panel discussion on the issues raised in the role playing, a view and analysis by the mediator of the issues, and a question and answer period. An experienced mediator will play the role of mediator. The players include representatives of a class or classes, defendants, insurance companies and government actors. Using a hypothetical based loosely on a group of cases filed against pharmacy benefit management companies that allegedly overcharged participants for drugs, the panel will act out a mock mediation highlighting the substantive legal interests of each party and the strategies utilized in the mediation. A role-playing session covering (1) pre-mediation considerations, such as timing, the possibility of global resolution, and mediation participation; (2) starting the mediation – deciding whether to have opening statements and, if so, how to frame the statement; (3) the opening round of the mediation; (4) bridging the gap; and (5) closing the deal.

Expert Mediator: Robert A. Meyer, JAMS
For the Plaintiff: Todd Jackson, Feinberg, Jackson, Worthman & Wasow LLP
For the Defendant: Russell Hirschhorn, Proskauer Rose LLP
Al Holifield, Holifield • Janich • Rachal • Ferrera, PLLC
For the Government: Marjorie Butler, Boston Regional Solicitor’s Office, U.S. Department of Labor

3:30 Afternoon Break

3:45 Mock Mediation (Continued)
Continued panel discussion on the issues raised in the role playing, a view and analysis by the mediator of the issues, and a question and answer period. An experienced mediator will play the role of mediator. The players include representatives of a class or classes, defendants, insurance companies and government actors. Using a hypothetical based loosely on a group of cases filed against pharmacy benefit management companies that allegedly overcharged participants for drugs, the panel will act out a mock mediation highlighting the substantive legal interests of each party and the strategies utilized in the mediation. A role-playing session covering (1) pre-mediation considerations, such as timing, the possibility of global resolution, and mediation participation; (2) starting the mediation – deciding whether to have opening statements and, if so, how to frame the statement; (3) the opening round of the mediation; (4) bridging the gap; and (5) closing the deal.

Expert Mediator: Robert A. Meyer, JAMS
For the Plaintiff: Todd Jackson, Feinberg, Jackson, Worthman & Wasow LLP
For the Defendant: Russell Hirschhorn, Proskauer Rose LLP
Al Holifield, Holifield • Janich • Rachal • Ferrera, PLLC
For the Government: Marjorie Butler, Boston Regional Solicitor’s Office, U.S. Department of Labor

4:45 Adjourn
ADVANCED ERISA LITIGATION NATIONAL INSTITUTE

PROGRAM INFORMATION

WHY SHOULD I ATTEND?
Approaching ERISA from a litigation perspective, this program emphasizes the practical, not the theoretical. This National Institute is for litigators and benefits practitioners who wish to further their knowledge of the substantive and most recent case law.

UNABLE TO ATTEND?
A digital audio set (course book and digital audio recordings via download) will be available for purchase approximately 4-6 weeks after the program. To pre-order your digital copy, refer to the order form at the end of this brochure. Contact Mary.Karounos@americanbar.org for additional information.

TUITION
Attend the entire two-day program, each breakfast, the lunch, the reception, and network with other registrants and faculty. Registrations must be postmarked by April 23rd to receive the Early Bird discount.

Early Bird Registration - On or Before April 23rd
- $1115 General Public
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- Register 2 or more people from the same organization and receive $50 reduction to the tuition rate indicated.
- Purchase the Employee Benefits Passport or are a current Employee Benefits Passport holder, receive 25% reduction to the tuition rate indicated.

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SCHOLARSHIPS

A limited number of scholarships to defray tuition expenses are available for this program on case-by-case basis. Qualifying attorneys will receive at least a 50% reduction in the course fee(s). Preference will be given to full-time LL.B. candidates. Scholarship applications must be received in the ABA offices no later than thirty days prior to the program presentation. You will be notified prior to the program if your application is approved. To request an application or receive additional information, contact Mary Karounos at 202.662.8676 or Mary.Karounos@americanbar.org.

MCLE

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For more information about CLE accreditation in your state, visit http://www.americanbar.org/cle/mandatory_cle.html or contact mary.karounos@americanbar.org.

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Recommended CPE Credits and Fields of Study: Program attendees can earn up to 12.00 CPE credits in Specialized Knowledge and Applications fields of study. Prerequisites: None; Advanced Preparation: None; Program Level: Intermediate; Delivery Method: Group-Live.
QUESTIONS?
If you have a specific question that you want answered, you can email it up to the day before the program to Mary.Karounos@americanbar.org, or ask the speakers directly during the program presentation.

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Please contact Mary Karounos at 202.662.8676.

PROGRAM CONFIRMATION
Written confirmation of your registration will be e-mailed to you. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the program, call the ABA at 202.662.8676 to confirm that your registration was received and the program is being held as scheduled.

HOTEL INFORMATION
DEADLINE FOR HOTEL RESERVATIONS: April 23rd
We have a limited number of rooms blocked with the Kinzie Hotel, Twenty West Kinzie, Chicago, IL 60654, at a special rate of $229 for single or double occupancy. All room rates are subject to city occupancy and sales tax. Unclaimed rooms will be released on April 23rd after which the hotel will accept reservations on a space and rate available basis only. All reservations must be guaranteed with a major credit card.

To register at the hotel:
Call the hotel directly at 312.395.9000 and mention the ABA Joint Committee on Employee Benefits ERISA Litigation National Institute Block.
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ABA #
○ $770 General Public One Day Only
○ $720 ABA Member One Day Only
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  ○ Section of Taxation, $75
  ○ Section of Health Law, $50
  ○ Section of Real Property, Trust and Estate Law, $70
  ○ Section of Tort Trial and Insurance Practice, $50

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• After April 23rd—No Refund *

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Mail: American Bar Association
Attn: Service Center - Meeting/Event Registrations Department
Meeting Code: EB051518EL
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