ERISA BASICS NATIONAL INSTITUTE AGENDA

WEDNESDAY, June 5, 2019

8:00-8:30   Registration and Networking Continental Breakfast *(Non-CLE)*

8:30-8:45   WELCOMING REMARKS AND OVERVIEW OF PROGRAM *(Non-CLE)*
            Program Co-Chairs:
            Denise M. Clark, *Clark Law Group, PLLC*
            Benjamin Eisner, *Spear Wilderman, PC*
            Russell L. Hirschhorn, *Proskauer Rose LLP*
            Joanne Roskey, *Government Attorney*

8:45-9:35  ERISA BASICS CONCEPTS – STATUTORY OVERVIEW
            This session will provide a high-level overview of ERISA, including what is a plan, what is a plan
            fiduciary, what is a plan sponsor, and who is an employee. It also will discuss the differences between the
            types of pension plans and types of welfare benefit plans.
            Denise M. Clark, *Clark Law Group, PLLC*
            Benjamin Eisner, *Spear Wilderman, PC*
            Russell L. Hirschhorn, *Proskauer Rose LLP*
            Joanne Roskey, *Government Attorney*

9:35-10:25 FIDUCIARY STANDARDS – PART I
            This session will address ERISA’s complex definition of fiduciary and discuss ERISA’s fiduciary duties.
            It also will discuss the responsibilities entailed in investing plan assets, and the difference between a plan
            sponsor and plan fiduciary.
            R. Joseph Barton, *Block & Leviton LLP*
            Mayoung Nham, *Slevin & Hart*
            George Sepsakos, *Groom Law Group*
            Thomas Tso, *U.S. Department of Labor*

10:25-10:40 Morning Break *(Non-CLE)*

10:40-11:40 FIDUCIARY STANDARDS – PART II
            Continuing from session one, this session will provide a high-level overview of prohibited transactions, a
            technical ERISA concept, as well as an overview of remedies for fiduciary breaches. This session also
            will provide pointers for compliance with the ERISA’s mandates and an overview of hot topics in ERISA
            fiduciary and class action litigation.
            R. Joseph Barton, *Block & Leviton LLP*
            Mayoung Nham, *Slevin & Hart*
            George Sepsakos, *Groom Law Group*
            Thomas Tso, *U.S. Department of Labor*
11:40-
12:40  **MINIMUM STANDARDS FOR TAX-QUALIFIED RETIREMENT PLANS – PART I**
The Internal Revenue Code requires that a retirement plan meet minimum standards to be qualified in order for employers and employees to receive tax benefits related to participation in employee benefit plans. This session will address those standards and will outline the complicated rules with which employers must comply to establish a tax qualified plan. It also will provide an opportunity to delve deeper into the qualification standards for retirement plans and to discuss with experienced practitioners any issues related to compliance with these standards.

In the Part I, the focus will be types of plans and plan formulas, definition of employee, calculating service, participation and coverage, minimum coverage testing, vesting, forfeitures, plan loans, IRS determination process, and defined contribution nondiscrimination testing rules.

**Sharon M. Goodman,** Slevin & Hart, PC
**Al Holifield,** Holifield, Janich & Ferrera, PLLC

12:40-
2:00  **LUNCHEON ADDRESS** (Non-CLE)
**Timothy Hauser,** Deputy Assistant Secretary for Program Operations, U.S. Department of Labor (invited)

2:00-
3:00  **MINIMUM STANDARDS FOR TAX-QUALIFIED RETIREMENT PLANS – PART II**
The Internal Revenue Code requires that a retirement plan meet minimum standards to be qualified in order for employers and employees to receive tax benefits related to participation in employee benefit plans. This session will address those standards and will outline the complicated rules with which employers must comply to establish a tax qualified plan. It also will provide an opportunity to delve deeper into the qualification standards for retirement plans and to discuss with experienced practitioners any issues related to compliance with these standards.

In the Part II, the focus will be benefit accrual rules, benefit limitations, defined benefit nondiscrimination testing rules, minimum funding rules, timing of benefit payments, forms of benefit payments and taxation of benefits.

**Sharon M. Goodman,** Slevin & Hart, PC
**Al Holifield,** Holifield, Janich & Ferrera, PLLC

3:00-
3:50  **GOVERNMENT ENFORCEMENT—Reporting and Disclosure**
Hear from the Department of Labor and practitioners regarding the requirements of plan reporting and what must be included for compliance with ERISA’s regulatory scheme.

**Moderator:** **Joanne Roskey,** Government Attorney
**Celeste Moran,** U.S. Department of Labor
**Scott Albert,** U.S. Department of Labor

3:50-
4:05  **Afternoon Break** (Non-CLE)
4:05 - 5:05  GOVERNMENT ENFORCEMENT—Agency Programs and Investigations
Hear from the Department of Labor regarding its enforcement program, including its structure, how it conducts investigations, and its enforcement priorities and initiatives.
Celeste Moran, U.S. Department of Labor
Michael Schloss, U.S. Department of Labor

5:05  Adjourn followed by a Networking Reception (Non-CLE)

THURSDAY, June 6, 2019

8:00 - 8:30  Registration and Networking Continental Breakfast (Non-CLE)

8:30 - 9:30  ERISA PREEMPTION
This session will introduce the fundamental principles of ERISA preemption and the impact it has on other legislation related to employee benefit plans and the exceptions the statute permits. It will detail how ERISA preemption has changed since the statute’s inception and discuss its current effect on state plan regulation.
Marie Casciari, DeBofsky, Sherman & Casciari PC
Aliya Robinson, ERIC
Elisabeth Oppenheimer, Bredhoff & Kaiser
Megan Hansen, U.S. Department of Labor

9:30 - 10:30  FEDERAL REGULATION OF HEALTH PLANS
This session will address federal employee welfare benefit plan regulation, including the Affordable Care Act, COBRA, ADA, GINA and other statutes and regulations. This session also will focus on the reporting and disclosure requirements that generally apply to ERISA governed health plans, including ACA reporting issues.
Ada Dolph, Seyfarth Shaw
Meghan Horn, Segal Group
Denise M. Clark, Clark Law Group, PLLC
Kristi Gotcher, U.S. Department of Labor

10:30 - 10:45  Morning Break (Non-CLE)

10:45 - 11:35  BENEFIT CLAIMS – PART I: ADMINISTRATIVE PROCEDURES
ERISA requires extensive procedures for the processing of claims and appeals, and a near-universal prerequisite to bringing suit when benefit claims are denied is the pre-suit appeal required by 29 U.S.C. § 1133. This program will cover the statutory basis for pre-suit appeals, when such appeals may be excused, and the rules and regulations governing pre-suit appeals.
Cassie Springer Ayeni, Springer Ayeni PLC
Yolanda Montgomery, SEIU Funds
Robert Rachal, Jackson Lewis PC
11:35 -
12:35 **BENEFIT CLAIMS – PART II: LITIGATION OVERVIEW**
Not all claims are resolved internally. This program will cover topics arising in the litigation of employee benefit claims, including basic civil procedure, the availability of juries, discovery, evidentiary considerations, and disposition of claims. This program will then address what occurs when suit is filed for benefits under an ERISA plan, including exhaustion, evidence the district court may consider, the judicial standards of review applied in benefit claims litigation, and the doctrine of conflict of interest. The panel will address procedural issues and strategies to be considered by both the claimant and the plan/plan sponsor in the review process and in litigation.

*Cassie Springer Ayeni, Springer Ayeni PLC*
*Yolanda Montgomery, SEIU Funds*
*Robert Rachal, Jackson Lewis PC*

12:35 -
2:05 **Lunch (On Your Own) (Non-CLE)**

2:05 -
3:05 **DISCRIMINATION IN AND INTERFERENCE WITH EMPLOYEE BENEFITS**
The breadth of protections under ERISA, the Affordable Care Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, as amended, and the Age Discrimination in Employment Act have been enlarged by recent regulatory actions of the EEOC, HHS, and DOL. This session will review potential claims in litigation including interference with an employee’s employment relationship with the specific intent of interfering with her attainment of benefits or future rights under a plan and retaliation against an employee for utilizing her benefit rights or for complaining about violations of ERISA. Discrimination in the provision of benefits in the design or access to health care, with a particular focus on denial of access on the basis of disability, sex, and sexual orientation also will be discussed. Additionally, the session will review how ERISA overlaps with other federal employment statutes when employees assert that employers have misclassified them under the Fair Labor Standards Act or have altered their terms and conditions of employment in order to avoid mandated benefits or statutory penalties under the Affordable Care Act.

*Jennie Arnold, Ledbetter, Parisi LLC*
*Denise M. Clark, Clark Law Group, PLLC*
*Stacey Cerrone, Proskauer Rose LLP*

3:05 -
4:05 **REMEDIES**
ERISA remedies have been a vigorously contested battle ground, especially in the wake of *Cigna Corp. v. Amara*, which reinvigorated the debate over the scope of “appropriate equitable relief” under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). This panel will provide a brief overview of the types of remedies available under ERISA’s major enforcement provisions and then focus on remedies in the post-*Amara* world. Topics will include recent and pending cases on the scope of monetary relief under § 502(a)(3) as well as plan terms limiting the availability of equitable remedies.

*R. Joseph Barton, Block & Leviton LLP*
*Stacey Cerrone, Proskauer Rose LLP*
*Jeffrey Hahn, U.S. Department of Labor*
*Jennie Arnold, Ledbetter Parisi, LLC*

4:05 -
4:20 **Afternoon Break (Non-CLE)**
4:20 - 5:20  **ERISA ETHICAL ISSUES AND CONCERNS** *(Ethics Session)*
This session will focus on key ethical rules and principles that should be considered by ERISA practitioners, including the scope of ethical duties to clients and non-clients, the creation and consequences of multiple representations and conflicts of interest, a lawyer’s duty to report wrongdoing of constituents in an organization, special ethical standards applicable to preparing tax opinions, rules applicable to multi-jurisdictional practice, the attorney-client privilege (and related fiduciary exception) and the attorney work product immunity.

*Marie Casciari, DeBofsky, Sherman & Casciari PC*
*Miguel Eaton, Jones Day*
*Robert Gower, Trucker Huss, APC*
*Simon Torres, Pension Benefit Guaranty Corporation*

5:20  Adjourn

**FRIDAY, June 7, 2019**

8:30 - 9:00  **Registration and Networking Continental Breakfast** *(Non-CLE)*

9:00 - 9:50  **MULTIEMPLOYER & OTHER COLLECTIVELY BARGAINED PLANS**
A general overview of the special rules and regulations governing multiemployer employee pension and welfare benefit plans under ERISA, including the Multiemployer Pension Plan Amendments Act of 1980, which created ERISA Section 515 for the collection of employer contributions, and which provided for the creation and enforcement of Withdrawal Liability. This panel will also cover the developing law and regulations affecting collectively bargained plans since the Pension Protection Act of 2006.

*John Harney, O'Donoghue & O'Donoghue LLP*
*Jeffrey I. Pasek, Cozen O'Connor*

10:00 - 10:50  **SECTION 401(k) PLANS**
This session covers the basics of the who, what, where, when and how of Section 401(k) plans. This session outlines all of the fundamental tax code and ERISA rules that govern the daily operation of a Section 401(k) plan.

*Carolyn Trenda, McGuireWoods LLP*
*Jay Dorsch, Cozen O'Connor*

10:50 - 11:05  **Morning Break** *(Non-CLE)*
11:05-11:55  ERISA POTPOURRI  
The session will discuss a number of frequently encountered issues by pension and health/welfare plans. For pension plans, this session will address the basics of QDRO’s, QMSCOs, and other spousal rights. For health and welfare plans, this session will discuss the developing law of subrogation and plan reimbursement, including plan self-help remedies and plaintiff responses to collection efforts.

Meredith Gage, Alston & Bird LLP
Kimberly Bradley, Abato, Rubenstein and Abato, PA

12:05-12:55  EXECUTIVE COMPENSATION  
This session will be an overview of the fundamentals of deferred compensation (including Code Section 409A), equity compensation, SERPs, excess plans, and golden parachutes.

Jay Dorsch, Cozen O’Connor

12:55  Adjourn