ERISA BASICS NATIONAL INSTITUTE AGENDA

WEDNESDAY, OCTOBER 16, 2019

8:00- 8:30 Registration and Networking Continental Breakfast

8:30- 8:45 WELCOMING REMARKS AND OVERVIEW OF PROGRAM
Program Co-Chairs:
Cassie Springer Ayeni, Springer Ayeni, APLC
Benjamin Eisner, Spear Wilderman, PC
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.
Cassie Springer Ayeni, Springer Ayeni, APLC
Benjamin Eisner, Spear Wilderman, PC
Joanne Roskey, Office of the Solicitor, U.S. Department of Labor

9:35- 10:25 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 introduce and explore those standards, outlining the complicated rules with which employers and plans 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 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.

10:25- 10:40 Morning Break

10:40- 11:40 MINIMUM STANDARDS FOR TAX-QUALIFIED RETIREMENT PLANS – PART II
Continuing the broad introduction to the rules for Qualified Plans under the Internal Revenue Code, in 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. Attendees will have an opportunity to discuss issues with experienced practitioners.

11:40- 12:40 GOVERNMENT ENFORCEMENT—Reporting and Disclosure
ERISA imposes extensive reporting and disclosure requirements. In this session you will 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.
WEDNESDAY, OCTOBER 16, 2019 (continued…)

12:40   LUNCHEON ADDRESS

2:00-3:00  GOVERNMENT ENFORCEMENT—Agency Programs and Investigations
In the second session regarding Government Enforcement of ERISA we will hear from Department of Labor representatives regarding the Department’s enforcement program. Panelists will cover how the Department has structured the enforcement program and how the Department conducts investigations. Panelists also will comment on current Department enforcement priorities and initiatives.

3:00-3:50  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.

3:50-4:05  Afternoon Break

4:05-5:05  ERISA PREEMPTION
This session will introduce the fundamental principles of ERISA preemption, the impact preemption has on other legislation related to employee benefit plans and the exceptions to preemption 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.

5:00   Adjourn followed by a Networking Reception

THURSDAY, OCTOBER 17, 2019

8:00-8:30  Registration and Networking Continental Breakfast

8:30-9:30  FIDUCIARY STANDARDS – PART I
This session will introduce 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.

9:30-10:30  FIDUCIARY STANDARDS – PART II
Continuing from session one, this session will provide an 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, time permitting, will touch on hot topics in ERISA fiduciary and class action litigation.
THURSDAY, OCTOBER 17, 2019 (continued…)

10:30-
10:45  Morning Break

10:45-
11:35  BENEFIT CLAIMS – PART I: ADMINISTRATIVE PROCEDURES
ERISA requires and prescribes extensive procedures for the internal processing of claims and appeals. 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.

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.

12:35-
1:45  Lunch (On Your Own)

1:45-
2:45  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 has 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 or in access to health care, with a particular focus on denial of access on the basis of disability, sex, and sexual orientation also will be addressed. 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.

2:45-
3:00  Afternoon Break
THURSDAY, OCTOBER 17, 2019 (continued…)

3:00- 4:00  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 on 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.

4:00- 5:00  ERISA ETHICAL ISSUES AND CONCERNS: BASICS AND ETHICS IN A DIGITAL WORLD
This session will focus on key ethical rules and principles that should be considered by ERISA practitioners. Specific topics will include the identification of the client(s), the scope of ethical duties to clients and non-clients, the creation and consequences of multiple representations and related conflicts of interest. Additional potential topics may include the 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, and the attorney-client privilege (and related fiduciary exception) and attorney work product doctrine. Panelists will also address ethics concerns when using the internet and other technology, including blogging, commenting on community websites, advertising, social media, and website representations.

5:00  Adjourn

FRIDAY, OCTOBER 18, 2019 **AM CONCURRENT BREAKOUT SESSIONS**

8:00- 8:30  Registration and Networking Continental Breakfast**

8:30- 9:20  *Option # 1: 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.

*Option # 2: SPOUSAL RIGHTS UNDER ERISA PLANS: QDROs, AND QMCSOs*
The benefits provided by employee benefit plans generally may not be alienated. This session will address the exceptions to this broad rule, introducing the basics of QDRO’s, QMCSOs, and other spousal and related rights. The panelists will also discuss the rights of same-sex spouses following the *Windsor* and *Obergefell* decisions as well as the requirements that must be met before Court or other orders that alienate a participants’ pension in a divorce situation can be honored, as well as requirements for providing employer sponsored group medical benefits to dependents in a divorce or other child support situation. It will also discuss the employers’ and plans’ responsibility for enforcing such orders.
FRIDAY, OCTOBER 18, 2019 **AM CONCURRENT BREAKOUT SESSIONS** (continued…)

9:20-10:10  **Option # 1: 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.

**Option # 2: 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.

10:10-10:30  **Morning Break**

10:30-11:20  **Option # 1: SUBROGATION AND REIMBURSEMENT CLAIMS**
Overpayment of benefit claims and efforts by plans to recover overpaid money have been the topic of several Supreme Court decisions that have informed practitioners about equitable remedies and the reach of ERISA preemption. The session will discuss the developing law of subrogation and plan reimbursement, including plan self-help remedies and plaintiff responses to collection efforts.

**Option # 2: CAFETERIA PLANS AND OTHER FRINGE BENEFITS**
This session will discuss the uses of cafeteria plans and explain the complex issues involved in establishing plans compliant with the Internal Revenue Code. Additionally, employees are increasingly expecting that their employers will offer more programs addressing these issues. This panel will discuss behavioral health benefit trends, including wellness programs, mental health benefits and EAPs, including the current rules and how to design compliant, effective benefit programs.

11:20  **Adjourn**