WEDNESDAY, FEBRUARY 6

6:00 p.m. – 7:30 p.m. Welcome Reception at Loews Vanderbilt Hotel (Symphony Foyer)
All meeting registrants and their registered guests are invited to attend the Welcome Reception at the Loews Vanderbilt Hotel Nashville.

THURSDAY, FEBRUARY 7

7:00 a.m. – 8:00 a.m. Registration and Breakfast (Symphony Foyer)

7:00 a.m. – 8:00 a.m. Breakfast for First-Time Attendees and Newer Lawyers (Sarrat/Krisam)
All first-timers, young lawyers and new Employee Benefits Law lawyers are encouraged to attend.

8:00 a.m. – 11:45 a.m. PLENARY SESSIONS (Symphony Ballroom)

8:00 a.m. – 8:15 a.m. WELCOME REMARKS
Denise M. Clark, Clark Law Group, PLLC, Washington, DC
Benjamin Eisner, Spear Wilderman, P.C., Philadelphia, PA
Russell L. Hirschhorn, Proskauer Rose LLP, New York, NY
Joanne Roskey, Government Attorney, Washington, DC

8:15 a.m. – 9:15 a.m. TOP TEN EMPLOYEE BENEFITS TOPICS OF 2018
You asked for it and now it’s back. The mile-high view of what happened last year in the benefits world. The top ten highlights in the benefits world regardless of who are your clients.

Kimberly Bradley, Abato, Rubenstein and Abato, P.A., Baltimore, MD
Tulio Chirinos, Proskauer Rose LLP, New Orleans, LA
Joseph Clark, Proskauer Rose LLP, New York, NY
Michael Daum, Blitman & King LLP, Syracuse, NY
James Hlawek, Seyfarth Shaw, LLP, Boston, MA
Sarah Kanter, Trucker Huss, San Francisco, CA
Sean McMahan, Morgan Lewis & Bockius LLP, Washington, DC
Mayoung “May” Nham, Slevin & Hart, Washington, DC
Gretchen Obrist, Keller Rohrback L.L.P., Seattle, WA
Simon Torres, Pension Benefit Guaranty Corporation, Washington, DC

9:15 a.m. – 10:15 a.m. REMARKS OF DOL ASSISTANT SECRETARY PRESTON RUTLEDGE

Preston Rutledge, Assistant Secretary of Labor for the Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC

10:15 a.m. – 10:30 a.m. Break (Symphony Foyer)
10:30 a.m. – 11:45 a.m. ARBITRATION: WHAT’S DIFFERENT ABOUT ERISA?
This panel will discuss the impact of the Supreme Court’s decision in Epic Systems v. Lewis and the Ninth Circuit’s interpretation in Munro v. USC. The panel also will discuss issues left open after these decisions, including whether plans can block arbitration relief for the plan by agreeing only to individual arbitration, and the impact of binding arbitration clauses on ERISA plans. In addition, the panelists will explore the pros and cons of employers’ adopting mandatory arbitration clauses, thereby precluding judicial review of ERISA claims.

Judith Broach, Broach & Stulberg LLP, New York, NY
Ian H. Morrison, Seyfarth Shaw LLP, Chicago, IL
Erin Riley, Keller Rohrback LLP, Seattle, WA

11:45 a.m. – 12:45 p.m. CONCURRENT BREAKOUT SESSIONS

11:45 a.m. – 12:45 p.m. MULTIEMPLOYER PLANS: CURRENT PENSION PLAN ISSUES: LEGISLATION AND AGENCY GUIDANCE (Symphony Ballroom I)
This panel will discuss the anticipated pension legislation from the Joint Select Committee on the Solvency of Multiemployer Plans and its impact on critical and declining plans and the PBGC. In the absence of legislation, the panel will discuss the ongoing challenges facing multiemployer plans and the PBGC, including MPRA suspension applications, and recent PBGC guidance on mergers and transfers. The panel also will review hot-button issues in DOL investigations and IRS audits, as well as the dueling district court decisions on the “Segal Blend” interest rate assumption in withdrawal liability cases and recent developments in successor liability for withdrawal liability.

Laureve D. Blackstone, Levy Ratner, P.C., New York, NY
Anthony S. Cacace, Proskauer LLP, New York, NY
Bruce Perlin, Pension Benefit Guaranty Corporation, Washington, DC

CIVIL PROCEDURE/GENERAL LITIGATION UPDATE (Symphony Ballroom II/III)
This panel will provide updates on important civil procedure issues including the pleading standards in ERISA cases, statute of limitations in fiduciary breach cases, remedies, class certification and standing to bring a lawsuit, as well as other areas depending on court decisions.

Jennie Arnold, Ledbetter Parisi LLC, Cincinnati, OH
R. Joseph Barton, Block & Leviton LLP, Washington, DC
Stacey Cerrone, Proskauer Rose LLP, New Orleans, LA
Robert M. Lewis Jr., U.S. Department of Labor, Atlanta, Georgia

WILL THE STATES STEP INTO THE BENEFITS VOID? (Carmichael/McTyeire)
The states are the laboratories for change, and they have been busy picking up the slack surrounding benefits issues where the feds have pulled back. But does ERISA permit them to do that? Come hear what the states are doing on state payroll IRAs, MEPS and marketplaces, the fiduciary rule and securities, pharmacy benefit managers, health care changes and prohibition of discretionary clauses (still).

Karen Handorf, Cohen Milstein Sellers & Tolle, Washington, DC
R. Bradford Huss, Trucker Huss, San Francisco, CA
Andrew C. Liazos, McDermott Will & Emery LLP, Boston, MA
Aliya Robinson, ERISA Industry Committee (ERIC), Washington, DC
1:00 p.m. – 2:15 p.m. **Inclusion Luncheon (Symphony Ballroom I)**
All are welcome to participate in an interactive presentation on promoting diversity and inclusion led by A. Faith English, Manager of Diversity and Inclusion at Lowenstein Sandler. Ms. English will share with us her extensive experience in developing innovative diversity and inclusion initiatives. Come and learn strategies for facilitating inclusion in your own communities.

*Luncheon Speaker Sponsors:*
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2:30 p.m. – 3:30 p.m. **Meet the Senior Book Editors (Neely)**

4:00 p.m. – 5:00 p.m. **Meet the Leadership and Government Fellows Reception (Green Room)**
All attendees are invited to meet the Section Chair, Council Liaisons, Employee Benefits Committee Co-Chairs and Government Fellows.

5:30 p.m. – 6:00 p.m. **Government Fellows Meeting (Bernard Boardroom)**

7:00 p.m. – 9:00 p.m. **Networking Reception at Nashville Underground, 105 Broadway (Buses will begin loading at 6:30 p.m.)**

**FRIDAY, FEBRUARY 8**

7:00 a.m. – 8:00 a.m. **Breakfast (Symphony Foyer)**

8:00 a.m. – 10:15 a.m. **PLENARY SESSIONS (Symphony Ballroom)**

8:00 a.m. – 8:15 a.m. **Report from the Senior Editors of Employee Benefits Law**

8:15 a.m. – 9:15 a.m. **WHAT ERISA PRACTITIONERS NEED TO KNOW ABOUT ACCOUNTING FOR PLANS**
Whether you focus on ERISA plan compliance issues, or litigate employee benefits issues, understanding the basics of plan accounting and the role the plan’s auditor plays is a necessity for all benefits practitioners. This session will focus on what you need to know about Form 5500 and Form 990, and how to read and understand the plan’s financial statements. It also will describe how the auditor can assist the plan with its compliance issues and implement litigation avoidance measures, particularly with respect to alternative investments, appropriate use of plan expenses, special projects relating to mergers, and agency audits and investigations. Panelists will discuss how the auditor can assist the plan to operate more efficiently through system implementation, control, and analysis. They also will discuss the relationship between the auditor and counsel.

Dave P. Dorsey, CPA, *Withum Smith+Brown, PC, Bethesda, MD*
Al Holifield, *Holifield Janich Rachal Ferrera, PLLC, Knoxville, TN*
Dinah Leventhal, *O'Donoghue & O'Donoghue LLP, Washington, DC*
Michelle C. Yau, *Cohen Milstein Sellers & Toll PLLC, Washington, DC*
9:15 a.m. – 10:15 am  ETHICS
The panel will address issues that arise in drafting engagement letters in benefits matters, including properly identifying the client, addressing possible conflicts and defining the scope of the representation. It also will provide an update on ethics issues, including recent guidance on gender bias and sexual harassment in the legal profession, the use of social media, law firm cybersecurity, the use of on-line service providers, e-discovery and a survey of legal privilege issues.

Tybe A. Brett, Feinstein Doyle Payne & Kravec, LLC, Pittsburgh, PA
J.S. “Chris” Christie, Birmingham, AL
Aditi Kumar, Pension Benefit Guaranty Corporation, Washington, DC

10:15 a.m. – 10:30 a.m.  Introductions and Update from Section Leadership

Joseph E. Tilson, Section Chair, Cozen O’Connor, Chicago, IL
Ruben R. Chapa, Public Council Liaison, U.S. Department of Labor, Chicago, IL
Robert M. Goldich, Employer Council Liaison, Greenberg Traurig LLP, Philadelphia, PA
Eunice Washington, Union & Employee Council Liaison, SEIU Benefit Funds, Washington, DC

10:30 a.m. – 10:45 a.m.  Break (Symphony Foyer)

10:45 a.m. – 1:00 p.m.  CONCURRENT BREAKOUT SESSIONS

10:45 a.m. – 11:45 a.m.  SHARING PLAN EXPENSES WITH SPONSORS/PARTIES IN INTEREST/RELATED PARTIES AND APPROPRIATE USES FOR PLAN ASSETS (Symphony Ballroom II/III)
Benefit plans often share administrative and other assistance with plan sponsors and related parties. This panel will discuss the possibilities and limitations on plans when they seek services from or seek to provide services to plan sponsors and related parties. Among the topics will be shared services agreements between plans (including best practices and tips), the provision of plan services by plan sponsors, ERISA 408(c) limitations on compensation to full-time employees or officers of sponsoring employers and unions, and correction of arrangements that do not meet ERISA requirements. The panel also will review the expense policies and types of administrative expenses that may cause problems for plans in DOL audits.

James Craig, U.S. Department of Labor, Washington, DC
Ivelisse Berio LeBeau, Sugarman & Susskind, P.A., Coral Gables, FL
Sara Pikofsky, Steptoe & Johnson, LLP, Washington, DC

FIDUCIARY LITIGATION UPDATE (Symphony Ballroom I)
What’s happening in fiduciary litigation? There has been significant activity involving fiduciary breach litigation. This panel will focus on issues in fiduciary breach litigation other than the 401(k) and 403(b) litigation. Topics will include burden of proof and loss causation, disclosure claims, ESOP litigation, and prescription drug litigation. And, while not technically fiduciary litigation, panelists also will provide an update on church plan litigation.

Marjorie Butler, U.S. Department of Labor, Boston, MA
Nathan Goldstein, Segal Roitman, LLP, Boston, MA
Radha Pathak, Stris & Maher, Los Angeles, CA
Robert Rachal, Holifield Janich Rachal Ferrera, PLLC, New Orleans, LA
BENEFIT CLAIMS: ALTERNATIVES TO LITIGATION
(Carmichael/McTyeire)
It is not always in the interest of the clients for cases to proceed to litigation. Panelists will explore alternatives to filing a lawsuit (except arbitration), such as pre-litigation settlement opportunities (when, how, and what to expect?), how media attention can impact a claims decision, and strategies for winning a case during a request for review period.

Neelam Chandna, Reich Adell & Cvitan, Los Angeles, CA
Kimberly A. Jones, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Chicago, IL
Martina Sherman, DeBofsky, Sherman & Casciari, PC, Chicago, IL
Jodi K. Swick, McDowell Hetherington, Oakland, CA

11:45 a.m. – 1:00 p.m.
FIDUCIARY DUTY ISSUES WITH ALTERNATIVE INVESTMENTS AND OUTSOURCING (Symphony Ballroom I)
The session will review the issues related to ERISA fiduciary duties and investments, beyond the negotiation of investment agreements. The panel will address how to ensure that clients are educated sufficiently to invest in alternative vehicles, including understanding the different structures for investment vehicles, the significance of whether such vehicles are plan assets, different kinds of risk and appropriate benchmarking. It also will discuss the pros and cons of outsourced investment management (OCIO) under ERISA §3(38), including the client’s fiduciary obligations in the search, contracting and ongoing monitoring of the OCIO.

Sharon Goodman, Slevin & Hart, P.C., Washington, DC
Andrew Irving, Arthur J. Gallagher, Newark, NJ
Robert M. Projansky, Proskauer Rose, LLP, New York, NY

MOCK HEARING ON MOTION TO DISMISS (Symphony Ballroom II/III)
This session will demonstrate a motion to dismiss hearing on procedural defenses potentially including Article III standing, statute of limitations, and/or forum non conveniens.

Party’s Counsel: Marie Casciari, DeBofsky, Sherman & Casciari, PC, Chicago, IL
Miguel Eaton, Jones Day, Washington, DC
Gov’t Counsel: Joanne Roskey, U.S. Department of Labor, Washington, DC
Judges: Denise M. Clark, Clark Law Group, PLLC, Washington, DC
Benjamin Eisner, Spear Wilderman, P.C., Philadelphia, PA

1:15 p.m. – 3:15 p.m. Women’s Lunch at The Henley, 2023 Broadway
Sponsored by Proskauer Rose LLP

1:15 p.m. – 3:15 p.m. Union Business Meeting (Sarratt/Kissam)

3:15 p.m. – 5:15 p.m.  Cocktail Reception (Symphony Foyer)

9:00 p.m. – 12:00 midnight Hospitality Suite (Symphony Foyer)
Join your friends and colleagues in the Hospitality Suite, which will feature cocktails and light snacks.
SATURDAY, FEBRUARY 9

8:00 a.m. – 9:00 a.m.  Breakfast (Symphony Foyer)

8:30 a.m. – 12:15 p.m.  PLENARY SESSIONS (Symphony Ballroom)

8:30 a.m. - 9:30 a.m.  HEALTH CARE UPDATE
The Affordable Care Act … it’s still here! The panelists will address the continued viability of the ACA, the regulations permitting association health plans and skinny plans (and related lawsuits), cease and desist orders that DOL can issue to MEWAs pursuant to ACA regulations, surprise billing, and the continued litigation surrounding wellness programs.

Ruben R. Chapa, U.S. Department of Labor, Chicago, IL
Sage Fattahian, Morgan, Lewis & Bockius LLP, Chicago, IL
Todd Jackson, Feinberg Jackson Worthman & Wasow LLP, Berkeley, CA
Rhona S. Lyons, Schuchat, Cook & Werner, Saint Louis, MO

9:30 a.m. – 10:30 a.m.  DC PLAN FEE AND INVESTMENT LITIGATION
There has been a significant number of reported decisions in cases concerning the investments and fees in 401(k) and 403(b) plans over the last twelve months. This panel will discuss the key issues and decisions, as well as comment on what all of this litigation means for plan participants and fiduciaries.

Robert Alexander, Bredhoff & Kaiser, Washington, DC
Gregory Y. Porter, Bailey & Glasser LLP, Washington, DC
Sam Schwartz-Fenwick, Seyfarth Shaw LLP, Chicago, IL
Thomas Tso, U.S. Department of Labor, Washington, DC (invited)

10:30 a.m. – 10:45 a.m.  Break (Symphony Foyer)

10:45 a.m. – 11:45 a.m.  BENEFIT CLAIMS
Between de novo review and the new claims regulations, are the tides turning in the majority of ERISA disability cases so that it is harder for a defendant-insurer to prevail? What evidence does it take to prevail on de novo or abuse of discretion review? Are remands with judicial instructions the new norm that allows opportunities to correct the record? The panelists will further discuss the latest decisions on attorney fee awards and prejudgment interest after there has been a remand or when a party has prevailed on any other significant legal issue.

Ada W. Dolph, Seyfarth Shaw LLP, Chicago, IL
Lisa M. Gomez, Cohen, Weiss and Simon LLP, New York, NY
Cassie Springer-Ayeni, Springer Ayeni APLC, Oakland, CA

11:45 a.m. – 12:15 p.m.  Committee Business Meeting (Symphony Ballroom)

Pro Bono Project
This year’s pro bono recipient is the Tennessee Justice Center. Information about TJC will be available at the meeting, and you also may visit them at https://www.tnjustice.org/. Donations of any amount are welcome at the TJC website, which will be attributed to the Employee Benefits Committee, or at the meeting. Thank you!
We thank our sponsors for their generous contributions:

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Meeting materials are posted online at:  
[www.ambar.org/EBCpapers](http://www.ambar.org/EBCpapers)

See you next year in Palm Springs!

Employee Benefits Committee  
2020 Midwinter Meeting  
Omni Rancho Las Palmas  
Rancho Mirage, California  
February 5-8, 2020