Tuesday, March 5

12:30 p.m. – 5:00 p.m.  Registration (Gold Ballroom Foyer)

1:00 p.m. – 6:15 p.m.  Mine Safety and Health Administration Track, Part I (Gold Ballroom)

1:00 p.m. - 1:15 p.m.  Opening and Introductions

Mark E. Heath, Spilman, Thomas & Battle PLLC, Charleston, WV
Doug Parker, Worksafe, Oakland, CA

1:15 p.m. - 1:45 p.m.  MSHA Goals For 2019
Assistant Secretary David G. Zatezalo was sworn in as the ninth head of MSHA on November 30, 2017. Charged with safety enforcement for all the nation's mines – coal and all other minerals mined – he will address goals for MSHA and where the agency is headed.

Speaker:  Hon. David G. Zatezalo, Assistant Secretary for Mine Safety and Health Administration, U.S. Department of Labor, Washington, DC

Introduction   Mark E. Heath, Spilman, Thomas & Battle, PLLC, Charleston, WV

1:45 p.m. - 2:15 p.m.  Report from the Mine Safety and Health Review Commission
Commissioner Young is the Acting Chairman of the Commission and will address the Commission work load and status of its quorum and the Commission's goals for 2019.

Speaker:  Hon. Michael G. Young, Acting Chairman and Commissioner, Federal Mine Safety and Health Review Commission, Washington, DC

Introduction   Doug Parker, Worksafe, Oakland, CA

2:15 p.m. - 3:15 p.m.  Pattern of Violations Cases After Pocahontas Coal
The current pattern of violations system has been in place approximately six years. The Affinity Mine has been on a pattern since 2013 and reached an agreement in 2018 with MSHA to end POV at the mine. The UMWA has sued over the agreement, arguing the mine should remain on pattern status. This panel will discuss the history of POV, its recent use and the status of the Affinity litigation.

Moderator:  Willa B. Perlmutter, Stoel, Portland, OR

Panelists:  Mark E. Heath, Spilman, Thomas & Battle, PLLC, Charleston, WV
Doug Parker, Worksafe, Oakland, CA

3:15 p.m. - 3:30 p.m.  Break (Gold Ballroom Foyer)
3:30 pm - 4:30 p.m. Settlement Agreements after American Coal II, Rockwell and Solar Sources
The authority of MSHA and operators to resolve cases has been the subject to much litigation the last few years. There has been litigation on the ability of ALJs to review and approve settlements, the right of ALJs to demand information before approving a settlement, and whether eliminating a special assessment requires ALJ approval. Panelists will cover this history and discuss where we may be headed in getting cases settled.

Moderator: Kristin White, Jackson Kelly, Denver, CO
Panelists: Thomas Paige, Deputy Associate Solicitor for Mine Safety and Health Division, U.S. Department of Labor, Washington, DC
Doug Parker, Worksafe, Oakland, CA
Nicholas W. Scala, Conn Maciel Carey LLP, Washington, DC

4:30 p.m. - 5:00 p.m. MSHRC Report on Current Issues in Case Processing, Time Deadlines, Workloads and Procedures
Judge Lesnick will address the Commission’s ALJ caseloads, processing times as well efforts to speed up the time it takes to get cases to hearing and decided.

Speaker: Hon. Robert J. Lesnick, Chief Administrative Law Judge, Mine Safety and Health Review Commission, Washington, DC
Introduction: Doug Parker, Worksafe, Oakland, CA

3:30 p.m. – 5:00 p.m. OSHA Primer (Gallery)
The primer provides a description of the fundamentals of the Occupational Safety and Health Act, the Occupational Safety and Health Administration, and the authority of the Occupational Safety and Health Review Commission. The session will cover the statutes involved in OSHA practice, OSHA enforcement of the regulations and standards promulgated pursuant to the OSH Act, the role of the Commission and appellate courts, and practice before those tribunals.

Panelists: Lindsay A. Di Salvo, Conn Maciel Carey, LLP, Washington, DC
Randy Rabinowitz, OSH Law Project, Washington, DC
Paul Spanos, Senior Trial Attorney, U.S. Department of Labor, Office of the Solicitor, Boston, MA

6:00 p.m. – 7:00 p.m. Welcome Reception at El San Juan Hotel (Well & Being Pool)

Wednesday, March 6

7:00 a.m. – 8:00 a.m. Registration and Breakfast Buffet (Ballroom Foyer & Terrace)
7:00 a.m. – 8:00 a.m. New Attendees’ Breakfast (Caña Restaurant)
8:00 a.m. – 12:30 p.m. General Sessions (Ballroom A)
8:00 a.m. – 8:15 a.m. Opening Remarks by Committee Co-Chairs
Jonathan Karmel, Union and Employee Co-Chair, Karmel Law Firm, Chicago, IL
Madeleine T. Le, Public Co-Chair, Counsel for OSHA, U. S. Department of Labor, Office of the Solicitor, Dallas, TX
Steve McCown, Employer Co-Chair, Littler Mendelson, Dallas and Austin, TX

8:15 a.m. – 8:30 a.m. Welcome Remarks by Section Leadership
Joseph E. Tilson, Section Chair, Cozen O'Connor, Chicago, IL
Victoria L. Bor, Council Liaison, Sherman Dunn, P.C., Washington, DC

8:30 a.m. – 9:00 a.m. Remarks from the Solicitor’s Office
The Solicitor of Labor will offer observations about SOL policy and enforcement of the OSH Act.
Speaker: Hon. Kate S. O'Scannlain, Solicitor of Labor, U.S. Department of Labor, Washington, DC

9:00 a.m. – 10:00 a.m. 2018-2019: OSHA Remarks and Key Issues in Enforcement
This panel will address developments on OSHA’s enforcement programs and initiatives, including National Emphasis Programs, new standards, egregious cases, enforcement of novel hazards, monitoring of corporate settlements, use of the recordkeeping rule regarding injury reporting, the data initiative uses for inspection targeting, and the status of Severe Violator Enforcement Program.

Moderator: Steve McCown, Littler Mendelson, Dallas and Austin, TX
Panelists: Patrick Kapust, Acting Director of the Directorate of Enforcement, U.S. Department of Labor, OSHA, Washington, DC
Orlando J. Pannocchia, Counsel for Regional Litigation and Advice, U.S. Department of Labor, Office of the Solicitor, Washington, DC

10:00 a.m. – 10:15 a.m. Break (Ballroom Terrace)

10:15 a.m. – 11:15 a.m. Whistleblower, Retaliation, and Alternative Litigation
This panel will discuss whistleblower and retaliation investigations and cases brought under the OSH Act and alternative litigation strategies and remedies outside of the OSHA regime. These alternative litigation methods include “citizen lawsuits” under federal environmental statutes, tort claims against employers for negligence in creating unsafe workplaces, including by nonemployees, and state statutes (e.g., unfair competition and fair advertising) to enforce workplace standards.

Moderator: Kenneth D. Kleinman, Stevens & Lee, Philadelphia, PA
Panelists: Schean Belton, Trial Attorney, U.S. Department of Labor, Office of the Solicitor, Nashville, TN
Scott Hall, Motley Rice LLC, Kansas City, MO
Susan Wiltsie, Hunton Andrews Kurth LLP, Washington, DC
11:15 a.m. – 12:30 p.m.  Remarks from the Occupational Safety and Health Review Commission
This panel will provide an update on the OSHRC, including providing insights on caseloads, procedural issues and changes, and the current state of the Commissions. Questions from the audience are encouraged.

Moderators:  
Victoria L. Bor, Sherman Dunn, P.C., Washington, DC
Paul Waters, The Waters Law Group, Tampa, FL

Panelists:  
Hon. Heather MacDougall, Chairman, Occupational Safety and Health Review Commission, Washington, DC
Hon. Cynthia Attwood, Commissioner, Occupational Safety and Health Review Commission, Washington, DC
Hon. James Sullivan, Commissioner, Occupational Safety and Health Review Commission, Washington, DC

1:00 p.m. – 5:15 p.m.  Mine Safety and Health Administration Track, Part II (Ballroom A)

1:00 p.m. - 2:15 p.m.  Interference Claims Under Section 105c: Where are We and Where are We Headed?
This panel will address the new case law under Section 105 interference claims, including attacks on safety bonus programs; requests to notify the company when an employee reports a safety issue to MSHA, ALJ authority to order a CEO to apologize to his workers, and the two tests being used by ALJs for interference claims.

Moderator:  
Mark E. Heath, Spilman, Thomas & Battle PLLC, Charleston, WV

Panelists:  
T.J. Baker, United Mine Workers of America, Triangle, VA
Jason Grover, Counsel for Trial Litigation, U.S. Department of Labor, Office of the Solicitor, Washington, DC
Tony Oppegard, Lexington, KY
Kristin White, Jackson Kelly, Denver, CO

2:15 p.m. - 3:30 p.m. Panel on Hot Issues in Mine Safety: S&S, Flagrant; Experts in Hearings; Pre-shift Examinations at Non-Metal Mines; and MSHA Enforcement at Non-Metal Mines; Developments in traditional 105(c) cases
This panel will discuss cutting-edge MSHA issues at mines, including use of experts in MSHA hearings, traditional discrimination claims and pre-shift examinations and other enforcement issues at metal and non-metal mines.

Moderator:  
Daniel Wolff, Crowell & Mooring, Washington, DC

Panelists:  
T.J. Baker, United Mine Workers of America, Triangle, VA
Jason Grover, Counsel for Trial Litigation, U.S. Department of Labor, Office of the Solicitor, Washington, DC
Margaret “Margo” S. Lopez, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Washington, DC
Tony Oppegard, Lexington, KY

3:30 p.m. - 3:45 p.m. Break (Ballroom Terrace)
3:45 p.m. - 4:45 p.m. Power of MSHA ALJs after the Sixth Circuit Ruling in Jones Brothers, 898 F.3d. 669 (July 31, 2018), and Where Do We Go from Here
There has been extensive litigation in recent years on whether various agency administrative law judges were properly appointed as required by the Constitution and what impact that has on ALJ decisions from those Judges. This panel will discuss the law, the new challenges to efforts to fix these alleged improper appointments, and what this means for decisions going forward.

Moderator: Willa B. Perlmutter, Stoel Rives LLP, Portland, OR

Panelists: Thomas Paige, Deputy Associate Solicitor for Mine Safety and Health Division, U.S. Department of Labor, Office of the Solicitor, Washington, DC
John Williams, Williams Kilpatrick & True, Lexington, KY

4:45 p.m. - 5:15 p.m. MSHA Enforcement Statistics: Citation and Order Numbers, Total Penalties, 105(c) and Temporary Reinstatement Claims, and Orders
This panel will look at MSHA statistics the last few years on significant and substantial designations, order and citation numbers, unwarrantable designations, and the number of discrimination cases filed and decided.

Speaker: Jason Grover, Counsel for Trial Litigation, U.S. Department of Labor, Office of the Solicitor, Washington, DC

Introduction: Mark E. Heath, Spilman, Thomas & Battle PLLC, Charleston, WV

5:30 p.m. – 7:00 p.m. Committee Reception (Ballroom Terrace)

Thursday, March 7

7:00 a.m. – 8:00 a.m. Breakfast Buffet (Ballroom Terrace)

8:00 a.m. – 11:15 a.m. General Sessions (Ballroom A)

8:00 a.m. – 9:00 a.m. Issues of Ethics, Professionalism and Civility in OSHA/MSHA Practice, including a Discussion of Practice Issues for Those with a Multistate Practice
This session will present current issues, but focus on the particular ethical issues confronting those with a multistate OSHA practice and the measures they take to avoid ethical traps.

Moderator: Jonathan Karmel, Karmel Law Firm, Chicago, IL

Panelists: Hon. Margaret Miller, Administrative Law Judge, Federal Mine Safety and Health Review Commission, Denver, CO
Hon. Covette Rooney, Chief Administrative Law Judge, Occupational Safety and Health Review Commission, Washington, DC
9:00 a.m. – 10:00 a.m.  The General Duty Clause: Its Use and Limitations
This panel will discuss cases that have shaped how OSHA has used the
general duty clause with a deep analysis of the elements of 5(a)(1), and how
that will affect the type of advice management lawyers will need to give to
their clients, as well as OSHA’s and employees’ expected approach.

Moderator:  Shontell Powell, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.,
Atlanta, GA

Panelists:  Jonathan Karmel, Karmel Law Firm, Chicago, Illinois
Dennis J. Morikawa, Morgan, Lewis & Bockius, LLP, Philadelphia, PA
Orlando J. Pannocchia, Counsel for Regional Litigation and Advice,
U.S. Department of Labor, Office of the Solicitor, Washington, DC

10:00 a.m. – 10:15 a.m.  Break (Ballroom Terrace)

10:15 a.m. – 11:15 a.m.  The Role of Safety in Emergency Response, including Hurricanes Irma
and Maria: The Response to the Natural Disasters in Puerto Rico
This panel will discuss safety in response to natural disasters, including the
roles that OSHA and employers may play in keeping disaster site workers and
employees safe during clean up and recovery operations.

Moderator:  Aaron R. Gelb, Conn Maciel Carey, LLP, Chicago, IL

Panelists:  Luis Diaz-Marcano, Division Counsel PR OSHA, San Juan, PR
Benjamin Kim, Nixon Peabody, Los Angeles, CA
William Shaklee, Senior Associate Counsel, U.S. Compliance, Walmart
Stores, Inc. Bentonville, AR

11:15 a.m. – 12:30 p.m.  Breakout Sessions (Ballrooms A, B & C)

A. OSHA Recordability, Reportability and Impact on Workers’
Compensation: The Interplay between OSHA’s Amended 29 CFR
1904.35 and Workers’ Compensation Laws and Administration
There has always been a significant interplay between workers’ compensation
compensability, which varies from State to State, and OSHA recordability. In
2014 OSHA expanded reporting requirements for amputations and injuries
requiring hospitalization, and in 2016 OSHA added anti-retaliation provisions
designed to avoid discouraging employees from reporting injuries. Now, with
several years of experience with these revised requirements, the panel will
discuss their impacts on workers’ compensation programs and, among other
things, the immediate reporting of injuries, drug free workplace programs, and
tangentially safety incentive programs.

Moderator:  Crystal S. McElrath, Swift Currie, Atlanta, GA

Panelists:  Michael Doyle, Counsel for OSHA, U.S. Department of Labor, Office of the
Solicitor, Philadelphia, PA
Eric Frumin, H&S Director, Change to Win, New York, NY
William J. Wahoff, Steptoe & Johnson, PLLC, Columbus, OH
B. The Process Safety Management Standard Interpreted
In September 2018, OSHRC issued a landmark decision that will influence compliance and process safety cases for years to come: BP. What is the likely approach by OSHA in consideration of BP’s interpretation and degree of deference to the Agency’s scientific positions?

Moderator: Gregory D. Dillard, Katten Muchin Rosenman, LLP, Houston, TX

Panelists: Doug Parker, Worksafe, Oakland, CA
Peter Vassalo, Senior Attorney, U.S. Department of Labor, Office of the Solicitor, Washington, DC

C. OSHA Inspection Issues
This panel will cover legal issues that may arise during OSHA inspections. Among topics covered will be the scope of inspection, walkaround rights, employee and management interviews, warrants and subpoenas, production of documents, voluntary compliance programs, use of drones and AI, and rapid response to complaints.

Moderator: Randy Rabinowitz, OSH Law Project, Washington, DC

Panelists: Nelva J. Smith, Steptoe & Johnson PLLC, Columbus, OH
Tim Williams, Counsel for Safety & Health, U.S. Department of Labor, Office of the Solicitor, Denver, CO

12:30 p.m. – 12:45 p.m. Committee Business Meeting (Ballroom A)
6:00 p.m. – 7:00 p.m. Diversity Reception (Aquarelle)

Friday, March 8
7:00 a.m. – 8:00 a.m. Breakfast Buffet (Ballroom Terrace)
8:00 a.m. – 12:30 p.m. General Sessions (Ballroom A)
8:00 a.m. – 9:00 a.m. Objection Overruled, or Will It Be Sustained?
A panel of OSHRC Administrative Law Judges will each in turn discuss the best practices of counsel in litigating cases before them at OSHRC.

Moderators: Eric E. Hobbs, Ogletree Deakins, Milwaukee, WI
Madeleine T. Le, Counsel for OSHA, U.S. Department of Labor, Office of the Solicitor, Dallas, TX

Panelists: Hon. Patrick Augustine, Administrative Law Judge, Occupational Safety and Health Review Commission, Denver, CO
Hon. Heather Joys, Administrative Law Judge, Occupational Safety and Health Review Commission, Atlanta, GA
Hon. Dennis L. Phillips, Administrative Law Judge, Occupational Safety and Health Review Commission, Washington, DC
9:00 a.m. – 10:00 a.m.  Significant Decisions
This panel will survey OSH Commission and Appellate Decisions in the interval that will have an influence on other cases in the future.

Moderator:  Jonathan L. Snare, Morgan, Lewis & Bockius LLP, Washington, DC
Panelists:  Edmund C. Baird, Associate Solicitor for Occupational Safety and Health, U.S. Department of Labor, Office of the Solicitor, Washington, DC
Eric Conn, Conn Maciel Carey, LLP, Washington, DC
Emily Tulli, OSH Law Project, Washington, DC

10:00 a.m. – 10:15 a.m.  Break (Ballroom Terrace)

10:15 a.m. – 11:15 a.m.  Toward a Safe New Day: Rethinking 21st Century Safety Programs
OSHA and some employers have traditionally focused on metrics such as injury rates and worker’s compensation experience modification rates or subscribed to compliance with ISO programs as evidence of an effective safety program and culture. The advent of new technology and new thinking about behavior-based safety programs suggests that reliance on traditional measures may be misplaced and even a misallocation of resources. Panelists will discuss traditional approaches to safety programs and explore whether new approaches can improve workplace safety.

Moderator:  Ronald W. Taylor, Venable LLP, Baltimore, MD
Panelists:  Nick DiMartino, Corporate Vice President, Safety, MasTec, Greensburg, PA
Eric Frumin, H&S Director, Change to Win, New York, NY
Patrick Kapust, Acting Director of the Directorate of Enforcement, U.S. Department of Labor, OSHA, Washington, DC
Fred Rine, Owner and CEO, FDRsafety, LLC, Franklin, TN

11:15 a.m. – 12:15 p.m.  Construction Update
Construction is a high hazard industry that covers a wide range of activities. The panel will discuss recent trends in construction enforcement, including OSHA’s enforcement policy regarding crane operator certification, the agency’s emphasis on trenching and excavation, and the implementation of the silica rule from the OSHA, employee, and employer perspectives.

Moderator:  Carla Gunnin, Jackson Lewis, P.C., Atlanta, GA
Panelists:  Victoria L. Bor, Sherman Dunn, P.C., Washington, DC
Scott Ketcham, Acting Director, Directorate of Construction Programs, U.S. Department of Labor, OSHA, Washington, DC
Jason Mills, Morgan, Lewis & Bockius, LLP, Los Angeles, CA

12:15 p.m. – 12:30 p.m.  Closing Remarks
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