PROGRAM AGENDA

WEDNESDAY, FEBRUARY 5

2:00 p.m. – 5:00 p.m.  Optional Tour: Mid-Century Modern Homes (optional ticketed event)

6:00 p.m. – 7:30 p.m.  Welcome Reception at Omni Rancho Las Palmas
All meeting registrants and their registered guests are invited to attend the Welcome Reception at the Omni Rancho Las Palmas Resort.

THURSDAY, FEBRUARY 6

7:00 a.m. – 8:00 a.m.  Registration and Breakfast

7:00 a.m. – 8:00 a.m.  Breakfast for First-Time Attendees and Newer Lawyers
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

8:00 a.m. – 8:15 a.m.  Welcome Remarks
Cassie Springer Ayeni, Springer Ayeni, Oakland CA
Benjamin Eisner, Spear Wilderman, P.C., Philadelphia, PA
Aliya Robinson, The ERISA Industry Committee, Washington, DC
Joanne Roskey, Government Attorney, Washington, DC

8:15 a.m. – 9:15 a.m.  Top Ten Employee Benefits Topics of 2019
The mile-high view of what happened last year in the benefits world. The top ten highlights in the benefits world regardless of the clients you represent.

9:15 a.m. – 10:15 a.m.  At the U.S. Supreme Court, Part I
The Supreme Court loves ERISA. This split session will focus on the three ERISA cases currently at the Supreme Court. The panel will discuss Jander v. IBM, where the Court will address issues related to pleading standards in company stock fund cases; Thole v. US Bancorp, where the Court will address issues of standing and whether an ERISA plan participant or beneficiary can seek injunctive relief under 29 U.S.C. § 1132(a)(3) or restoration of plan losses under 29 U.S.C. § 1132(a)(2) without demonstrating individual financial loss or the imminent risk thereof; Sulyma v. Intel, where the Court will address what constitutes “actual knowledge” of an alleged fiduciary breach for statute of limitations purposes. As of the writing of this agenda, other high profile ERISA cases are being considered for review as well and may be discussed by the panel. They include Rutledge v. Pharmaceutical Care Management Association, where the Court may address whether a state statute regulating pharmacy benefit managers’ drug-reimbursement rates is preempted by ERISA; and Putnam v. Brotherston, where the Court may address who bears the burden of proving losses.
10:15 a.m. – 10:30 a.m. Refreshment Break

10:30 a.m. – 11:30 a.m. At the U.S. Supreme Court, Part II
The Supreme Court loves ERISA. This split session will focus on ERISA cases currently at the Supreme Court. The panel will discuss *Jander v. IBM*, where the Court will address issues related to pleading standards in company stock fund cases; *Thole v. US Bancorp*, where the Court will address issues of standing and whether an ERISA plan participant or beneficiary can seek injunctive relief under 29 U.S.C. § 1132(a)(3) or restoration of plan losses under 29 U.S.C. § 1132(a)(2) without demonstrating individual financial loss or the imminent risk thereof; *Sulyma v. Intel*, where the Court will address what constitutes “actual knowledge” of an alleged fiduciary breach for statute of limitations purposes. As of the writing of this agenda, other high-profile ERISA cases are being considered for review as well and may be discussed by the panel. They include *Rutledge v. Pharmaceutical Care Management Association*, where the Court may address whether a state statute regulating pharmacy benefit managers’ drug-reimbursement rates is preempted by ERISA; and *Putnam v. Brotherston*, where the Court may address who bears the burden of proving losses.

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

**Multiemployer Pension Plans: Selected Topics**
There are roughly 1,400 multiemployer plans in the United States, covering 10 million people. In addition to following pending legislative changes affecting all pension plans and multiemployer plans in particular, practitioners representing multiemployer plans need to know and stay up-to-date on developments in withdrawal liability case law and regulations, as well as the tools for the roughly 140 troubled plans, including PBGC-assisted mergers and MPRA benefit suspensions. This panel will discuss the New York Times withdrawal liability interest rate assumption and recent successorship cases, enforcement of the contribution requirements in rehabilitation plans, the recent proposed regulations on calculating withdrawal liability taking into account the changes required under the Multiemployer Pension Reform Act of 2014 (MPRA), and final regulations on multiemployer plan mergers and on alternative terms and conditions to satisfy withdrawal liability. The panel also will drill down into MPRA suspension applications. Finally, the panel will touch on some more general compliance issues facing multiemployer plans, such as dealing with pension benefit overpayments and pending new regulations on electronic disclosure.

**Defined Contribution Investment Litigation Update**
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.

**Current Trends in Disability Benefit, Life Insurance Plan and AD&D Litigation**
Panelists will explore the key issues in ERISA benefit claims litigation with a particular focus on disability, life insurance, and accidental death and dismemberment claims. The panel will discuss the evolving case law on discovery under the *de novo* and arbitrary and capricious standards of review; how substantial compliance with the benefit claims regulations impacts or does not impact the litigation proceedings; and how the new disability claims
regulations effect the appeal and litigation proceedings. The panel also will
discuss what constitutes an accident for purposes of an accidental death claim;
how the courts are interpreting criminal acts exclusions; and plan design issues
particular to life and accidental death and dismemberment policies.

1:00 p.m. – 2:15 p.m.  Inclusion Luncheon

2:30 p.m. – 3:30 p.m.  Meet the Senior Book Editors

4:00 p.m. – 5:00 p.m.  Meet the Leadership and Government Fellows Reception
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

7:00 p.m. – 9:00 p.m.  Networking Reception at Omni Rancho Las Palmas

FRIDAY, FEBRUARY 7

7:00 a.m. – 8:00 a.m.  Breakfast

8:00 a.m. – 10:15 a.m.  PLENARY SESSIONS

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.  To Arbitrate or Not to Arbitrate?
This panel will recent case law developments, including Epic Systems Corp. v.
Lewis, Munro v. USC, and Dorman v. Charles Schwab, on arbitration and class
action waivers and their potential implications for ERISA litigation. Although
some companies look towards arbitration and class-waiver provisions to limit
class-action costs and large judgments, others are choosing to remove these
provisions from employment agreements. The panel will discuss the pros and
cons of including these provisions in plan documents and employment
agreements.

9:15 a.m. – 10:45 am  [GUEST SPEAKER]

10:45 a.m. – 11:00 a.m.  Introductions and Update from Section Leadership

11:00 a.m. – 11:15 a.m.  Refreshment Break

11:15 a.m. –12:15 p.m.  Ethics in ERISA
The panel will focus on every attorney’s ethical duties regarding electronically
stored information in varying contexts, including litigation, compliance,
transactions and law firm cybersecurity. It also will provide updates on the
attorney-client privilege and the so-called “fiduciary exception,” as well as
recent guidance on gender bias and sexual harassment in the legal profession,
and other matters.
CONCURRENT BREAKOUT SESSIONS

Fact or Fiction: Challenges to Mortality Assumptions in Calculating Alternative Forms of Benefits
The next frontier in ERISA class actions may have arrived. The panel will discuss the recent spate of class actions alleging that the use of “outdated” mortality tables violates ERISA anti-cutback provisions and breaches trustees’ fiduciary duties. Motions to dismiss have been briefed; results thus far are mixed.

Service Provider Contracts, Fees and Cross Plan Offsetting
Attorneys representing employee benefits plans and their fiduciaries face a number of issues when evaluating the propriety of agreements between their clients and outside service providers. Additionally, attorneys representing sponsors of health plans or their insurers may face complicated issues related to cross plan offsetting. This panel will discuss recent developments with respect to plan provider contracts including issues related to prohibited transactions, reasonable service provider fees, disclaimers of fiduciary status, indemnity provisions, as well as other topics. With respect to cross plan offsetting, the panel will discuss recent decisions such as Peterson v. UnitedHealth Group, Inc., 913 F.3d 769 (8th Cir. 2019), addressing cross plan offsetting in health plans as well as Department of Labor guidance and what plans and third-party administrators are doing to address the issue.

Welfare Plan New Regulation Compliance Workshop
HRAs, AHPs, STLDI, MHPAEA—it is hard enough to keep up with the acronyms, much less all of the new guidance and compliance challenges. Come learn about the new integration rules for Health Reimbursement Accounts, the new possibilities for Short Term Limited Duration Insurance, the new Mental Health Parity Addiction Equity Act guidance, and more. In addition to providing an overview of the regulations, panelists will address compliance issues facing welfare plans. The panel will navigate compliance issues raised by the new guidance, as well as surprise medical billing, cross-plan offsetting, wellness plans, and more.

1:30 p.m. – 3:15 p.m.  Women’s Lunch  
Sponsored by Proskauer Rose LLP

3:15 p.m. – 5:15 p.m.  Plaintiff’s Business Meeting

3:15 p.m. – 5:15 p.m.  Union Business Meeting

6:00 p.m. – 7:00 p.m.  Cocktail Reception

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

SATURDAY, FEBRUARY 8

7:30 a.m. – 8:30 a.m.  Breakfast
8:30 a.m. – 12:15 p.m.  PLENARY SESSIONS

8:30 a.m. - 9:30 a.m. Government Investigations and Audits of Employee Benefit Plans
Are your clients ready for an investigation or audit by the government? This panel will address issues facing plan sponsors and service providers during governmental investigations and audits and will explore recent trends and topics in investigations and audits. We will discuss how to navigate the investigative process, and best practices for working with government investigators. Additionally, the panel will provide an overview of corrective actions and the settlement agreement process.

9:30 a.m. – 10:30 a.m. Challenges to Retirement Security in the 21st Century
Retirement Security is in crisis. Half of working Americans have no pension or retirement savings. Single employer plans, multiemployer plans and both employer and union plan sponsors face a number of challenges as workers, employers and retirees move toward the middle of the 21st Century. This panel will provide a broad overview of challenges to providing a safe and secure lifelong retirement income to working Americans. Topics include the post-Joint Select Committee Congressional response to the Multiemployer funding crisis and PBGC insolvency (Butch Lewis Act, SECURE Act), Alternative pension plan designs (hybrid, cash balance, variable accrual, and composite plans); Plan Qualification and Alternatives to the IRS Determination Letter program absent corporate merger; Mergers and Partitions with or without PBGC assistance, MPRA suspensions and future prospects for retirement security.

10:30 a.m. – 10:45 a.m. Refreshment Break

10:45 a.m. – 11:45 a.m. Health and Welfare Plan Litigation and Compliance
This session will focus on the current trends in ERISA healthcare litigation, with particular focus on mental health/substance use disorder claims and the Wit v. United Behavioral Health decision. The panel will explore best practices for developing the guidelines used to assess medical necessity; whether these claims are best resolved on an individual or class action basis; and the plan design considerations for resolving these issues through proper plan drafting. The panel also will discuss recent litigation and guidance released by the DOL in relation to the Federal Mental Health Parity and Addiction Equity Act, and the plan design implications raised by the Parity Act.

11:45 a.m. – 12:15 p.m. Committee Business Meeting

The ABA will seek 11.5 hours of CLE credit in 60-minute states, and 13.8 hours of CLE credit for this program in 50-minute states including 1 hour of ethics credit in 60-minute states and 1.2 hours of ethics CLE credit in 50-minute states. Credit hours are estimated and are subject to each state’s approval and credit rounding rules. Visit www.americanbar.org/mcle for general information on CLE at the ABA.

Visit the Section of Labor & Employment Law website at www.americanbar.org/labor for information about the Section Development Fund and Government and YLD Fellowship Program opportunities.

For registration fees over $500, qualifying attorneys could receive at least a 50% reduction in the course fee. This does not include any reduction in meals, lodging or travel costs associated with the course. Send requests to laborempllaw@americanbar.org.