PROGRAM AGENDA

WEDNESDAY, FEBRUARY 5

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

THURSDAY, FEBRUARY 6

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

7:00 a.m. – 8:00 a.m.   Breakfast for First-Time Attendees and Newer Lawyers (*Desert Suite 2*)
All first-time attendees and newer Employee Benefits lawyers are encouraged to
attend.

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

8:15 a.m. – 10:30 a.m. PLENARY SESSIONS (*Las Palmas Ballroom*)

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

*Moderator:* *Russell L. Hirschhorn*, *Proskauer Rose LLP, New York, NY*

Panelists:  
*Damarr Butler*, *O’Melveny & Myers, Washington, DC*  
*Lindsey Chopin*, *Jackson Lewis P.C., New Orleans, LA*  
*Rachel Coen*, *Springer Ayeni, Oakland, CA*  
*Colin Downes*, *Block & Leviton LLP, Washington, DC*  
*Ian Eliasoph*, *U.S. Department of Labor, San Francisco, CA*  
*Nate Goldstein*, *Segal Roitman, LLP, Boston, MA*  
*Celeste Moran*, *U.S. Department of Labor, Boston, MA*  
*Stephanie Plantenkamp*, *Beeson Tayer & Bodine, Sacramento, CA*  
*William Reynolds*, *Debofsky Sherman Casciari Reynolds PC, Chicago, IL*  
*Amanda Sonnenborn*, *Seyfarth Shaw, Chicago, IL*
9:15 a.m. – 10:15 a.m. ERISA at the U.S. Supreme Court, Part I (Las Palmas Ballroom)
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, including 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.

Panelists: Penny Clark, Bredhoff & Kaiser, PLLC, Washington, DC
Radha Pathak, Stris & Maher, LLP, Los Angeles, CA
Myron D. Rumeld, Proskauer Rose LLP, New York, NY
Thomas Tso, U.S. Department of Labor, Washington, DC

10:15 a.m. – 10:30 a.m. Refreshment Break (Ballroom Foyer)

10:30 a.m. – 11:30 a.m. ERISA at the U.S. Supreme Court, Part II (Las Palmas Ballroom)
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, including 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.

Panelists: Robert Alexander, Bredhoff & Kaiser, PLLC, Washington, DC
Elizabeth Hopkins, Kantor & Kantor, LLP, Northridge, CA
Howard Shapiro, Jackson Lewis P.C., New Orleans, LA
Thomas Tso, U.S. Department of Labor, Washington, DC

11:30 a.m. – 12:30 p.m. CONCURRENT SESSIONS (Las Palmas Ballroom)

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.

Panelists:
Neelam Chandna, Reich, Adell & Cvitan, Los Angeles, CA
Louisa Soulard, Pension Benefit Guaranty Corporation, Washington, DC
Patrick Spangler, Vedder Price LLP, Chicago, IL

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.

Panelists:
Marjorie Butler, U.S. Department of Labor, Washington, DC
Erin Riley, Keller Rohrback, LLP, Seattle, WA
Robert W. Rachal, Jackson Lewis P.C., New Orleans, LA
Laure van Heijenoort, Walker & van Heijenoort, Albuquerque, NM

Current Trends in Disability Benefit, Life Insurance Plan and AD&D Litigation
This session 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.

Panelists:
Mark DeBofsky, Debofsky Sherman Casiciari Reynolds PC, Chicago, IL
Kimberly A. Jones, Faegre Drinker Biddle LLP, Chicago, IL
Matthew Leppert, Schuchat Cook & Werner, St. Louis, MO

12:30 p.m. – 1:15 p.m. Inclusion Luncheon (Salon 5)

1:15 p.m. – 2:15 p.m. Just Belonging: #ChooseCourage (Salon 5)
We need brave leaders. And without them we will not achieve our diversity and inclusion goals as a profession. In this session, we will unpack what it means to be a courageous and inclusive leader and how to be a change agent for disrupting and mitigating the common biases that show up in the legal profession.
Participants will learn to identify common patterns of bias, strategies to disrupt bias and key skill sets for inclusive leadership.

**Speaker:** Kori S. Carew, *Chief Inclusion and Diversity Officer, Seyfarth Shaw, Chicago, IL*

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**FRIDAY, FEBRUARY 7**

2:30 p.m. – 3:30 p.m. **Meet the Senior Book Editors (Las Palmas Ballroom FGH)**

4:00 p.m. – 5:00 p.m. **Meet the Leadership and Government Fellows Reception (BluEmber Lounge)**
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 (Desert Suite 2)**

7:00 p.m. – 9:00 p.m. **Networking Reception at Omni Rancho Las Palmas (Starlight Terrace)**

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**2:30 p.m. – 3:30 p.m. Meet the Senior Book Editors (Las Palmas Ballroom FGH)**

2:30 p.m. – 3:30 p.m. **Meet the Senior Book Editors (Las Palmas Ballroom FGH)**

**Panelists:**
Jennie Arnold, Ledbetter Parisi LLC, Cincinnati, OH
James Bloom, Schneider Wallace Cottrell Konecny Wotkyns LLP, Emeryville, CA
Stacey Cerrone, Jackson Lewis P.C., New Orleans, LA

**9:15 a.m. – 10:45 a.m. Employee Benefits Security Administration Priorities and Initiatives**
The Assistant Secretary of Labor for the Employee Benefits Security Administration, U.S. Department of Labor, will discuss key achievements by the agency in the area of employee benefits during 2019 and will address the Trump Administration’s regulatory and enforcement priorities and initiatives for EBSA in 2020. Topics to be addressed include SECURE Act implementation and other administration guidance and enforcement priorities. The presentation will provide insight into policy and programmatic objectives of the Department under ERISA and an important context in which to understand and navigate with the regulatory and enforcement activities of the agency.
**Speaker:** Preston Rutledge, Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC

10:45 a.m. – 11:00 a.m. **Update from Section Leadership and Introduction of Pro Bono Service Project**

Christopher T. Hexter, Section Chair, Schuchat Cook & Werner, St. Louis, MO
Samantha C. Grant, Section Chair-Elect, Sheppard Mullin, Los Angeles, CA
Joseph J. Torres, Employer Council Liaison, Jenner & Block, Chicago, IL
Eunice Washington, Union & Employee Council Liaison, SEIU Benefit Funds, Washington, DC

11:00 a.m. – 11:15 a.m. **Refreshment Break (Ballroom Foyer)**

11:15 a.m. – 12:15 p.m. **Ethics in Employee Benefit Practices**
The panel will provide updates on the ethical duties of employee benefits attorneys 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 on other legal privileges. The panel also will discuss ethics issues that arise from claims for reimbursement by attorneys representing plans and/or fiduciaries and from the defense of those claims by participants’ attorneys in varying scenarios, after McCutchen and Montenile.

**Panelists:**
Tybe Brett, Feinstein Doyle Payne Kravec, LLC, Pittsburgh, PA
J.S. “Chris” Christie, Jr., Sirote & Permutt, PC, Birmingham, AL
Simon Torres, Pension Benefit Guaranty Corporation, Washington, DC

12:15 p.m. – 1:15 p.m. **CONCURRENT SESSIONS (Las Palmas Ballroom)**

**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.

**Panelists:**
David M. Fusco, Schwarzwald McNair & Fusco LLP, Cleveland, OH
Greg Porter, Bailey & Glasser LLP, Washington, DC
Robert Newman, Covington & Burling LLP, Washington, DC

**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.

**Panelists:**

Natalie Kossak, Arthur J. Gallagher & Co., Newark, NJ  
Ivelisse Berio LeBeau, Sugarman & Susskind, PA, Coral Gables, FL  
Susanna Benson, U.S. Department of Labor, Washington, DC  
Lisa Serebin, Creitz & Serebin LLP, San Francisco, CA

**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.

**Panelists:**

Denise M. Clark, Clark Law Group, PLLC, Washington, DC  
Benjamin J. Conley, Seyfarth Shaw LLP, Chicago, IL  
Megan Hansen, U.S. Department of Labor, Washington, DC  
Tzvi Mackson, Cohen Weiss & Simon LLP, New York, NY

1:15 p.m. – 3:15 p.m. **Women’s Lunch** *(Sunrise Terrace at Omni Rancho Las Palmas Resort)*  
*Supported by Proskauer Rose LLP*

3:15 p.m. – 5:15 p.m. **Plaintiff’s Business Meeting** *(Las Palmas Ballroom ABC)*

3:15 p.m. – 5:15 p.m. **Union Business Meeting** *(Las Palmas Ballroom FGH)*

6:00 p.m. – 7:00 p.m. **Cocktail Reception** *(Sunrise Terrace)*

9:00 p.m. – 12:00 midnight **Hospitality Suite** *(BluEmber Lounge)*

Join your friends and colleagues in the Hospitality Suite, which will feature cocktails and light snacks and desserts.

**SATURDAY, FEBRUARY 8**

8:00 a.m. – 9:00 a.m. **Breakfast Buffet** *(Ballroom Foyer)*

8:30 a.m. – 12:15 p.m. **PLENARY SESSIONS** *(Las Palmas Ballroom)*

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 it will explore recent trends and topics in investigations and audits. Panelists also 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.

**Panelists:**
- Sharon Goodman, Slevin & Hart, P.C., Washington, DC
- Al Holifield, Holifield Janich & Ferrara, LLP, Knoxville, TN
- Dane Steffenson, Littler Mendelson P.C., Atlanta, GA

10:30 a.m. – 10:45 a.m. **Refreshment Break (Ballroom Foyer)**

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.

**Panelists:**
- R. Joseph Barton, Block & Leviton LLP, Washington, DC
- John Harney, O'Donoghue & O'Donoghue LLP, Washington, DC
- Bruce Perlin, Pension Benefit Guaranty Corporation, Washington, DC (invited)
- Aliya Robinson, The ERISA Industry Committee, Washington, DC

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

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