

**American Bar Association Section of Labor and Employment Law
Occupational Safety and Health Law Committee
2020 Midwinter Meeting
Rancho Mirage, CA
March 3-6, 2020**

PROGRAM AGENDA

DRAFT 2-13-20

Tuesday, March 3

7:30 a.m. – 8:30 a.m. Registration and Continental Breakfast (*Fiesta Ballroom Foyer*)

8:30 a.m. – 5:15 p.m. Mine Safety and Health Administration (*Fiesta Ballroom 6-8*)

8:30 a.m. – 8:45 a.m. Welcome and Introductions

Mark E. Heath, *Spilman, Thomas & Battle PLLC, Charleston, WV*
TJ Baker, *United Mine Workers of America, Triangle, VA*

8:45 a.m. -- 9:15 a.m.	Remarks from MSHA
------------------------	-------------------

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

9:15 a.m. -- 10:15 a.m. MSHA Accident Investigations: A to Z
A complete discussion of the accident investigation process, roles of state agencies, tech support, MSHA, company and solicitor, and preservation of evidence, testing, record requests, 103(j) and (k) orders, final report, etc.

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

Panelists: **TJ Baker**, *United Mine Workers of America, Triangle, VA*
William K. Doran, *Ogletree Deakins, Washington, DC*
Karen Johnston, *Jackson Kelly, Denver CO*
Todd C. Myers, *Blackhawk Mining, LLC, Lexington, KY*
Robert S. Wilson, *Health and Safety Counsel, Office of the Solicitor, U.S. Department of Labor, Arlington, VA*

10:15 a.m. -- 10:30 a.m. Refreshment Break (*Fiesta Ballroom Foyer*)

10:30 a.m. -- 11:30 a.m.	<p>FMSHRC Decisions and Best Practices before Commission ALJs</p> <p>A review of Commission decisions in the last year by the General Counsel and, from the new Chief ALJ and a veteran ALJ, a discussion of best practices for attorneys appearing before a FMSHRC ALJ.</p>
---------------------------------	---

Moderator: TJ Baker, *United Mine Workers of America, Triangle, VA*

Panelists: **Hon. Thomas P. McCarthy**, *Administrative Law Judge, Federal Mine Safety and Health Review Commission, Washington, DC*
Hon. Glynn F. Voisin, *Chief Administrative Law Judge, Federal Mine Safety and Health Review Commission, Washington, DC*
Michael McCord, *General Counsel, Federal Mine Safety and Health Review Commission, Washington, DC*

11:30 a.m. -- 12:00 noon	MSHA Statistics A look at significant and substantial rates; numbers of discrimination cases, citation and order numbers, flagrants for both the coal and metal/non-metal divisions.
Speaker:	Jason Grover , <i>Counsel for Trial Litigation, U.S. Department of Labor, Office of the Solicitor, Washington, DC</i>
12:00 noon - 1:30 p.m.	Lunch (<i>on your own</i>)
1:30 p.m. -- 2:30 p.m.	Effective Mine Safety and Health Programs: What Improves Safety? This presentation will look at trends in the evolution of effective health and safety programs at mines and what has been shown to improve safety and reduce injury rates, including the use of behavior-based safety programs at the employer and state safety agency level.
Moderator:	April E. Nelson , <i>Associate Solicitor for Mine Safety and Health, Mine Safety and Health Division, U.S. Department of Labor, Office of the Solicitor, Washington, DC</i>
Panelists:	TJ Baker , <i>United Mine Workers of America, Triangle, VA</i> Brad J. Mantel , <i>Counsel for Standards and Legal Advice, Mine Safety and Health Division U.S. Department of Labor, Office of the Solicitor, Washington, DC</i> Nicholas Scala , <i>Conn Maciel Carey LLP, Columbus, OH</i> Ryan Seelke , <i>Safety Manager and EHS Counsel, The Doe Run Company, St. Louis, MO</i> Jim Vicini , <i>Senior Advisor, Office of the Assistant Secretary, MSHA and former Director, Kentucky Division of Mine Safety</i>
2:30 p.m. -- 3:45 p.m.	Hot Topics in Safety Issues at Metal/Non-Metal Mines This panel will look at recent prosecutions for contractor training records, the preshift examination requirements for metal/non-metal mines and recent developments in Section 105(c) discrimination claims in both coal and metal/non-metal mines.
Moderator:	Daniel Z. Zaluski , <i>Vice President of Administration, Environmental and Legal, Ramaco Resources, Inc., Lexington, KY</i>
Panelists:	TJ Baker , <i>United Mine Workers of America, Triangle, VA</i> Jason Grover , <i>Counsel for Trial Litigation, U.S. Department of Labor, Office of the Solicitor, Washington, DC</i> Willa B. Perlmutter , <i>Stoel Rives LLP, Portland, OR</i> Kristin Baker White , <i>Fisher & Phillips LLP, Denver, CO</i> John M. Williams , <i>Williams Kilpatrick PLLC, Lexington, KY</i>
3:45 p.m. -- 4:00 p.m.	Refreshment Break
4:00 p.m. -- 5:15 p.m.	Hot Topics in for All Mine Safety This panel will look at current litigation over MSHA plan approvals and how to challenge plan denials; the role of ALJs in settlement review and what the ALJ can request from litigants; current status of Petitions for Modification and

whether they are useful to pursue, and what effect bankruptcy has on discrimination claims and civil penalty litigation.

Moderator: **Dennise Smith**, *Spilman Thomas & Battle, PLLC, Charleston, WV*

Panelists: **TJ 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*
Mark E. Heath, *Spilman Thomas & Battle, PLLC, Charleston, WV*
Dana Svendsen, *Sherman & Howard LLC, Denver, CO*
Arthur M. Wolfson, *Fisher Phillips, Pittsburgh, PA*

3:30 p.m. – 5:00 p.m.

OSHA Primer (Starlight Ballroom F)

The primer will provide 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 DiSalvo**, *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, Washington DC*

6:00 p.m. – 7:00 p.m.

Welcome Reception (Starlight Terrace)

Wednesday, March 4

7:00 a.m. – 8:00 a.m.

Continental Breakfast (Starlight Terrace)

7:00 a.m. – 8:00 a.m.

New Attendees' Breakfast (Fiesta Patio)

8:00 a.m. – 12:30 p.m.

General Sessions (Fiesta Ballroom 5-8)

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*

Steven R. McCown, *Employer Co-Chair, Littler Mendelson P.C., Dallas and Austin, TX*

8:15 a.m. – 8:30 a.m.

Welcome Remarks by Section Leadership

Samantha C. Grant, *Section Chair-Elect, Sheppard Mullin, Los Angeles, CA*

Victoria L. Bor, *Council Liaison, Sherman Dunn, P.C., Washington, DC*

Eric A. Tate, *Council Liaison, Morrison & Foerster LLP, San Francisco, CA*

8:30 a.m. – 9:00 a.m.	Remarks from the Solicitor of Labor The Solicitor of Labor will offer observations about SOL policy and enforcement of the OSH Act.
Speaker:	Hon. Kate S. O’Scannlain , <i>Solicitor of Labor, U.S. Department of Labor, Washington, DC</i>
9:00 a.m. - 9:15 a.m.	Welcome Remarks California OSHA
Speaker:	Doug Parker , <i>Chief, Cal/OSHA, San Francisco, CA</i>
9:00 a.m. – 10:00 a.m.	Spouse/Guest Breakfast (<i>Ember Room</i>)
9:15 a.m. – 10:15 a.m.	2019-2020: 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, and monitoring of corporate settlements.
Moderator:	Steven R. McCown , <i>Littler Mendelson P.C., Dallas and Austin, TX</i>
Panelists:	Patrick Kapust , <i>Deputy Director, Directorate of Enforcement Programs, Washington DC</i> Orlando J. Pannocchia , <i>Counsel for Regional Litigation and Advice, U.S. Department of Labor, Office of the Solicitor, Washington, DC</i>
10:15 a.m. – 10:30 a.m.	Refreshment Break (<i>Ballroom Foyer</i>)
10:15 a.m. – 11:30 a.m.	Significant OSH Commission and Appellate 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:	Dennis J. Morikawa , <i>Morgan Lewis & Bockius LLP, Philadelphia, PA</i>
Panelists:	Edmund C. Baird , <i>Associate Solicitor for Occupational Safety and Health, U.S. Department of Labor, Office of the Solicitor, Washington, DC</i> Victoria L. Bor , <i>Sherman Dunn, P.C., Washington, DC</i> Carla J. Gunnin , <i>Amazon, Director of Governance and External Affairs, Atlanta, GA</i>
11:30 a.m. – 12:30 p.m.	Remarks from the Occupational Safety and Health Review Commission and the Federal Mine Safety and Health Review Commission This panel will provide an update on the OSHRC and FMSHRC, including the current makeup of the Commissions, differences in procedures, how the two handle arguments and decisions, and what all Commissioners see as best practices in briefing, arguing cases and practicing before both Commissions.
Moderators:	Mark E. Heath , <i>Spillman Thomas Battle, PLLC, Charleston, WV</i> William J. Wahoff , <i>Steptoe & Johnson PLLC, Columbus, OH</i>

Panelists:

Hon. James Sullivan, *Chairman, Occupational Safety and Health Review Commission, Washington, DC*

Hon. Cynthia Attwood, *Commissioner, Occupational Safety and Health Review Commission, Washington, DC*

Hon. Amanda Laihow, *Commissioner, Occupational Safety and Health Review Commission, Washington, DC*

Hon. Marco M. Rajkovich, Jr., *Chairman, Federal Mine Safety and Health Review Commission, Washington, DC*

Hon. William I. Althen, *Commissioner, Federal Mine Safety and Health Review Commission, Washington, DC*

Hon. Mary Lu Jordan, *Commissioner, Federal Mine Safety and Health Review Commission, Washington, DC*

Hon. Arthur R. Traynor II, *Commissioner, Federal Mine Safety and Health Review Commission, Washington, DC*

Hon. Michael G. Young, *Commissioner, Federal Mine Safety and Health Review Commission, Washington, DC*

5:30 p.m. – 7:00 p.m. **Cocktail Reception (*Las Palmas Lawn*)**

Thursday, March 5

7:00 a.m. – 8:00 a.m. **Continental Breakfast (*Starlight Terrace*)**

8:00 a.m. – 11:15 a.m. **General Sessions (*Fiesta Ballroom 5-8*)**

8:00 a.m. – 9:00 a.m. **Issues of Ethics, Professionalism and Civility in OSHA/MSHA Practice**
This session will present current issues focusing on the particular ethics issues confronting OSHA and MSHA practitioners and the measures they take to avoid ethical traps.

Moderator: **Hon. George R. Salem**, *Former Solicitor of Labor; Strategic Advisor, DLA Piper LLP, Washington, DC*

Panelists:

Hon. Glynn F. Voisin, *Chief Administrative Law Judge, Federal Mine Safety and Health Review Commission, Washington, DC*

Hon. Covette Rooney, *Chief Administrative Law Judge, Occupational Safety and Health Review Commission, Washington, DC*

Hon. Thomas P. McCarthy, *Administrative Law Judge, Federal Mine Safety and Health Review Commission, Washington, DC*

9:00 a.m. – 9:30 a.m. **Opioids in the Workplace**
This panel will discuss how regulators, employers, and employees can address the scourge of opioids in the workplace to prevent accidents and deaths in the workplace.

Moderator: **Shontell D. Powell**, *Ogletree Deakins, Atlanta, GA*

Panelists: **John Howard, MD**, *Director, National Institute for Occupational Safety and Health, Washington, DC*

9:30 a.m. – 10:45 a.m.	<p>Toward a Safe New Day: The Role of New Technologies in Safety Programs</p> <p>This panel will pick up where last year's panel ended on effective safety programs and cultures. New technology and new thinking about safety programs offers new ways to evaluate and promote workplace safety. Panelists will discuss new technologies affording new approaches to safety programs.</p> <p>Moderator: Ronald W. Taylor, <i>Venable LLP, Baltimore, MD</i></p> <p>Panelists: Chrysoula Komis, Ph.D., <i>Colden Corp., Philadelphia, PA</i> Juan Lopez, <i>U.S. Department of Labor, Office of the Solicitor, Washington, DC</i> Heather MacDougall, <i>Vice President, Worldwide, Workplace Health and Safety, Amazon, Washington, DC</i></p>
10:45a.m. – 11:00 a.m.	Refreshment Break
11:00 a.m. – 12:00 noon	<p><u>Breakout Sessions</u> (<i>Las Palmas Ballroom</i>)</p> <p>A. Agency Guidance Under Recent Executive Orders (<i>Las Palmas Ballroom F</i>)</p> <p>This panel will discuss recent Executive Orders and their effect on agency guidance and enforcement moving forward.</p> <p>Moderator: Jonathan Snare, <i>Morgan Lewis & Bockius LLP, Washington, DC</i></p> <p>Panelists: Edmund Baird, <i>Associate Solicitor for Occupational Safety and Health, U.S. Department of Labor, Office of the Solicitor, Washington, DC</i> Kenneth D. Kleinman, <i>Stevens and Lee, Philadelphia, PA</i> Katie Tracy, <i>Center for Progressive Reform, Washington, DC</i></p> <p>B. Evolution of Process Safety Management (<i>Las Palmas Ballroom G</i>)</p> <p>This panel will discuss the ever-evolving PSM practice, including recent decisions and their effect on enforcement and safety.</p> <p>Moderator: Eric Conn, <i>Conn Maciel Carey LLP, Washington, DC</i></p> <p>Panelists: Gregory C. Dillard, <i>Baker Botts, Houston, TX</i> Daniel Hennefeld, <i>U. S. Department of Labor, Office of the Solicitor, New York, NY</i> Nicole Marquez-Baker, <i>Worksafe, Oakland, CA</i></p> <p>C. TSCA and Impact on Worker Safety and Health (<i>Las Palmas Ballroom H</i>)</p> <p>This panel will discuss the Toxic Substances Control Act (TSCA) and what it means for worker safety.</p> <p>Panelists: Valerie Butera, <i>Ogletree Deakins, Detroit, MI</i> Randy Rabinowitz, <i>OSH Law Project, Washington, DC</i></p>
12:00 noon – 12:15 p.m.	Committee Business Meeting (<i>Fiesta Ballroom 5-8</i>)
5:30 p.m. – 7:00 p.m.	<p>Diversity Reception (<i>Sunrise Terrace</i>)</p> <p><i>Sponsored by Amazon</i></p>

Friday, March 6

7:00 a.m. – 8:00 a.m. Continental Breakfast (*Starlight Terrace*)

8:00 a.m. – 12:30 p.m. General Sessions (*Fiesta Ballroom 5-8*)

8:00 a.m. – 9:00 a.m. View from Beyond: OSHRC Judges Panel

Panelists will discuss the best (and worst?) practices of counsel in litigating cases before the OSHRC.

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

Panelists: **Hon. Carol A. Baumerich**, *Administrative Law Judge, Occupational Safety and Health Review Commission, Washington, DC*
Hon. Sharon Calhoun, *Administrative Law Judge, Occupational Safety and Health Review Commission, Atlanta, GA*
Hon. William Coleman, *Administrative Law Judge, Occupational Safety and Health Review Commission, Washington, DC*
Hon. Brian A. Duncan, *Administrative Law Judge, Occupational Safety and Health Review Commission, Denver, CO*
Hon. Christopher D. Helms, *Administrative Law Judge, Occupational Safety and Health Review Commission, Denver, CO*

9:00 a.m. – 10:00 a.m. OSHA in Practice: Mock Cross Examination

This session will present a mock trial of OSHA citations.

Judge: **Hon. Dennis L. Phillips**, *Administrative Law Judge, Occupational Safety and Health Review Commission, Washington, DC*

Parties/Witnesses: **Jason S. Mills**, *Morgan Lewis & Bockius LLP, Los Angeles, CA*
Margaret Sewell, *Counsel for OSHA, U.S. Department of Labor, Office of the Solicitor, Chicago, IL*

10:00 a.m. – 10:15 a.m. Refreshment Break (*Ballroom Foyer*)

10:15 a.m. – 11:15 a.m. Breakout Sessions (*Las Palmas Ballroom*)

A. California Workplace Violence and Indoor Heat Rules for General Industry (*Las Palmas Ballroom F*)

Panelists will discuss California's Workplace Violence and Indoor Heat Rules and its impact on worker safety.

Moderator: **Benjamin J. Kim**, *Nixon Peabody, Los Angeles, CA*

Panelists: **Doug Parker**, *Chief, CalOSHA, San Francisco, CA*
Alka Ramchandani-Raj, *Littler Mendelson, Walnut Creek, CA*
Jora Trang, *Worksafe, Oakland, CA*

B. Access to and Protection from Potential Disclosure under the Freedom of Information Act (*Las Palmas Ballroom G*)

This panel will discuss the Supreme Court's recent decision in *Food Mktg. Inst. v. Argus Leader Media* and its impact on Exemption 4 of the FOIA.

Panelists: **Jonathan Karmel**, *Karmel Law Firm, Chicago, IL*
Madeleine T. Le, *U. S. Department of Labor, Office of the Solicitor, Dallas, TX*
Adam Young, *Seyfarth Shaw LLP, Chicago, IL*

C. Construction/Dusting Off Your Understanding of the New Silica Rule (*Las Palmas Ballroom H*)

This panel will discuss the impact and enforcement of OSHA's new silica standard for construction, which requires employers to limit worker exposures to respirable crystalline silica.

Moderator: **Howard Mavity**, *Fisher Phillips, Atlanta, GA*

Panelists: **Scott Ketcham**, *Director, Directorate of Construction Programs, OSHA, Washington, DC*
Kathryn M. McMahon, *Conn Maciel Carey LLP, Washington, DC*
Orlando J. Pannocchia, *U.S. Department of Labor, Office of the Solicitor, Washington, DC*
Rebecca Reindel, MS, MPH, *AFL-CIO, Washington, DC*

11:15 a.m. – 12:15 p.m.

What Can and Does Evoke Criminal Prosecution under the OSH and MSH Acts

This panel will discuss federal and state prosecutions for criminal violations related to workplace safety and health.

Moderator: **Douglas W. Crim**, *Douglas W. Crim PLC, Haslett, MI*

Panelists: **Kevin D. Bland**, *Ogletree Deakins, Orange County, CA*
Kelly Ernby, *Deputy District Attorney, Orange County, CA*
Lana N. Pettus, *Assistant Section Chief, Environmental Crimes Section Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC*
Peter Vassalo, *U.S. Department of Labor, Office of the Solicitor, Washington, DC*

12:15 p.m. – 12:30 p.m.

Closing Remarks

Meeting papers and presentations are available at:

www.ambar.org/OSHApapers

We thank our sponsors for their generous contributions:

Premier Diamond Level

Amazon

Diamond Level

Nixon Peabody LLP

Platinum Level

Baker Botts

FDRsafety, LLC

Jackson Lewis PC

Little Mendelson PC

Gold Level

Spilman, Thomas & Battle, PLLC

Steptoe & Johnson PLLC

Silver Level

Conn Maciel Carey LLP