

AMERICAN BAR ASSOCIATION
SECTION OF LABOR AND EMPLOYMENT LAW

2009 MIDWINTER MEETING PROGRAM OF
THE EMPLOYEE BENEFITS COMMITTEE

CHARLESTON PLACE
CHARLESTON, SOUTH CAROLINA
FEBRUARY 18-21, 2009

PROGRAM AGENDA

Wednesday, February 18

- 4:00 p.m. – 5:30 p.m. **Registration** (*Riviera Ballroom*)
- 6:00 p.m. – 7:30 p.m. **Welcome Reception** (*Riviera Ballroom*)

Thursday, February 19

- 7:00 a.m. – 8:00 a.m. **Registration and Continental Breakfast** (*Magnolia Willow Foyer*)
- 7:00 a.m. – 8:00 a.m. **Breakfast for First- Time Attendee/”Young” Lawyers/ New Employee Benefits Law Lawyers** (*Charleston Grill*)
- 8:00 a.m. – 1:10 p.m. **General Session** (*Magnolia Willow Ballroom*)
- 8:00 a.m. – 8:10 a.m. **Welcome Remarks – Committee Co-Chairs**
Mark D. DeBofsky, Daley, DeBofsky & Bryant, Chicago, IL
Lissa J. Paris, Murtha Cullina LLP, Hartford, CT
Douglas M. Selwyn, Conner & Winters, LLP, Houston, Texas
- 8:10 a.m. -8:35 a.m. **Change: The Impact of a New Administration and a Difficult Economy**
- Speakers:*
Mary Ellen Signorille, AARP, Washington, DC
Michele Varnhagen, House Education and Workforce Committee, Washington, DC (invited)
Aliya Wong, Chamber of Commerce, Washington, DC
Tom Nyhan, Central States, Chicago, IL

8:35 a.m. – 9:50 a.m.

The Standard and Scope of Review:

What's next after *Met Life v. Glenn*?

1. How should district courts "factor" the conflict into their decisions?
2. Given the trust analysis, should courts call the standard strictly "abuse of discretion" and not "arbitrary and capricious"?
3. What limits will be placed on discovery?
4. Whether a conflict exists where the claims administrator is hired by but is not the party paying the claim.
5. How can plans minimize the weight the conflict factor will get?

Speaker:

The Honorable William M. Acker, Jr, United States District Court for the Northern District of Alabama, Birmingham, AL

Panelists:

Jim Ciapciak, Ciapciak & Associates, Norwood, MA
Elizabeth Hopkins, Department of Labor, Washington DC (invited)
Jay McElligott, McGuireWoods LLP, Richmond, VA
Tom Moukawsher, Moukawsher & Walsh LLC, Groton, CT
Bill Payne, Stember Feinstein et al, Pittsburgh, PA
Cassie Springer Sullivan, Springer-Sullivan & Roberts, Oakland, CA

9:50 a.m. – 10:40 a.m.

Chapter 12: Current Hot Procedural Issues in ERISA Litigation

1. Class Rulings and Representative Actions Under § 502(a)(2)
2. Statutory Violations – Can They Be Brought as Claims for Benefits?

Speakers:

Bob Bach, Law Offices of Robert J Bach, New York, NY
Judy Broach, Broach & Stulberg LLP, New York, NY
Ron Kravitz, Liner Yankelevitz Sunshine & Regenstreif, San Francisco, CA
Nick Pappas, Weil Gotshal & Manges LLP, New York, NY
Gary Tell, O'Melveny & Myers LLP, Washington, DC
Millie Warner, Weil Gotshal & Manges LLP, New York, NY

10:40 a.m. – 10:55 a.m.

Refreshment Break (*Magnolia Willow Foyer*)

10:55 a.m. – 11:10 a.m.

Welcome by Section Chair-Elect and Council Liaisons

D. Ward Kallstrom, Morgan Lewis & Bockius, LLP, San Francisco, CA
Nora L. Macey, Macey Swanson and Allman, Indianapolis, IN
Joyce A. Mader, O'Donoghue & O'Donoghue LLP, Washington, DC

11:10 a.m. – 11:35 a.m.

Chapter 11: Preemption

1. State health care reform
2. Discretionary Clauses

Speakers:

Paul Blankenstein, Gibson Dunn & Crutcher LLP, Washington, DC
Ivelisse Berio LeBeau, Sugarman & Susskind, PA, Coral Gables, FL
Jeffrey Lewis, Lewis Feinberg Lee Renaker & Jackson, Oakland, CA
Greg Porter, McTigue & Porter LLP, Washington, DC

11:35 p.m. -12:00 p.m.

Chapter 14: Disability Plans

The Utility of Functional Capacity Evaluations, Objective Evidence Requirements, and Other Evaluative Tools in the Context of Fibromyalgia, Chronic Fatigue Syndrome, and Similar Conditions Involving Self-Reported Symptoms.

Speakers:

Kay Kyungsun Yu, Pepper Hamilton LLP, Philadelphia, PA
Mark C. Nielsen, Groom Law Group Chartered, Washington, DC
Jay Sushelsky, AARP Foundation Litigation, Washington, DC

12:00 p.m. – 12:50 p.m.

Chapters 16: Pension Protection Act & Multi-Employer Pension Plan Funding

Speakers:

Judy Mazo, The Segal Company, Washington, DC
Bruce Perlin, IRS, Washington, DC
Jani Rachelson, Cohen Weiss Simon, New York, NY
Barry Slevin, Slevin & Hart, Washington, DC
Tom Vasiljevich, Ogletree Deakins et al, Chicago, IL

3:00 p.m. – 5:00 p.m.

Meet the Leadership Reception (*Beauregard*)

6:00 p.m. – 8:00 p.m.

Networking Reception aboard the USS Yorktown

9:00 p.m. – 12:00 a.m.

Hospitality Suite (*2H Suite*)

Sponsored by: Blitman & King LLP ; Cohen, Weiss and Simon LLP;
Conner & Winters, LLP; Cook, Portune & Logothetis ; O'Donoghue &
O'Donoghue LLP; Robein, Urann, Spencer, Picard & Cangemi, P.C.; Slevin
& Hart, P.C.

Friday, February 20

7:00 a.m. – 8:00 a.m.

Registration and Continental Breakfast (*Magnolia Willow Foyer*)

7:00 a.m. – 8:00 a.m.

Union and Neutral Meeting (*Drayton*)

8:00 a.m. – 12:50 p.m.

General Session (*Magnolia Willow Ballroom*)

8:00 a.m. – 8:25 a.m.

IRC 409A Update

Speakers:

Sharon Goodman, Slevin & Hart, Washington, DC
Dan Janich, Janich Law Group, Chicago, IL
John Utz, Utz Miller & Kuhn LLC, Overland Park, KS

8:25 a.m. – 8:40 a.m.

Report from the Senior Editors

8:40 a.m. - 9:30 a.m.

Chapters 5 & 6: Qualified Plans

1. Current Issues in 401(k) Plans;
2. 403(b) Update;
3. QDROs;
4. *Kennedy v. DuPont*

Speakers:

Claude Cazzulino, Schwartz Steinsapir Dohrmann, Los Angeles, CA
Neelam Chandna, Reich Adell & Cvitan, Los Angeles, CA
Brian Dougherty, Post & Schell PC, Philadelphia, PA
Kelly Kuglitsch, Drinker Biddle & Reath LLP, Milwaukee, WI
David Weingarten, Slevin & Hart PC, Washington, DC

9:30 a.m. – 10:45 a.m.

ERISA Plan Fees and Fee Disclosures: Legislative Proposals, DOL Regulatory Developments and Litigation

Speakers:

Maria Cangemi, Robein Urann Spencer Picard et al, Metairie, LA
Stacey Cerrone, Proskauer Rose LLP, New Orleans, LA
Deborah S. Davidson, Morgan Lewis & Bockius LLP, Chicago, IL
Ellen Doyle, Stember Feinstein Doyle & Payne LLC, Pittsburgh, PA
Elizabeth Hopkins, Department of Labor representative (invited),
Washington DC

10:45 a.m. – 11:00 a.m.

Refreshment Break (*Magnolia Willow Foyer*)

11:00 a.m. – 11:25 a.m.

Chapter 17: Withdrawal liability

1. *El Paso Case*

Speakers:

Angela Marie Hubbell, Wildman, Harrold, Allen & Dixon, Chicago, IL
Jim O'Connell, Jacobs Burns, Chicago, IL
Bruce Perlin, IRS, Washington, DC
Bob Schwartz, Tucker Huss, San Francisco, CA

11:25 a.m. – 11:50 a.m.

Chapters 7 & 8: Welfare Plans

1. Updates on VEBAS

Speaker:

Nell Hennessey, Fiduciary Counselors Inc, Washington, DC

2. Mental Health Parity

Speakers:

Kathy Bakich, The Segal Company, Washington, DC
Felicia Finston, Baker Botts LLP, Dallas, TX

11:50 a.m. – 12:50 p.m.

Chapter 20: Ethics

1. An update on the fiduciary exception since the Third Circuit decision in *Wachtel*
2. Electronic discovery/ metadata issues
3. New Federal Rule of Evidence 502 as it relates to waivers of attorney-client privilege
4. An update on IRS Circular 230 issues

Speakers:

Gwen Handelman, NSU Law, Fort Lauderdale, FL
Wood W. Lay, Hunton & Williams LLP, Charlotte, NC
Gabe Minc, Law Office of Gabriel J Minc, Chicago, IL
Tim Parsons, Pendleton Friedberg Wilson and Hennessey PC, Denver, CO
Karen Suhre, Karen K Suhre Atty at Law, Dallas, TX

1:00 p.m. – 3:00 p.m.

Women's Lunch sponsored by Proskauer Rose LLP (*Planter's Inn/ Garden Room*)

3:15 p.m. – 5:15 p.m.

Plaintiff's Meeting (*Colleton*)

6:00 p.m. – 7:00 p.m.

Pre-Dine Around Reception (*Grand Hall*)

7:00 p.m. – 10:00 p.m.

Dine Around

9:00 p.m. – 12:00 a.m.

Hospitality Suite (*2H Suite*)

Sponsored By: Murtha Cullina LLP and Vedder Price

Saturday, February 21

8:00 a.m. – 9:00 a.m.

Registration and Continental Breakfast (*Magnolia Willow Foyer*)

9:00 a.m. – 12:30 p.m.

General Session (*Magnolia Willow Ballroom*)

9:00 a.m. - 9:50 a.m.

Chapter 10: Fiduciary

1. Recent developments employer stock litigation (Reliant, Tribune et. al)
2. Subprime lawsuits
3. Alternative investments – DOL enforcement and valuation and prudence issues

Speakers:

Robert Archer, Archer, Byington, Glennon & Levine LLP, Melville, NY
Michael Crabtree, Central Pension Fund, Washington, DC
Gregory Moore, O'Donoghue & O'Donoghue LLP, Washington, DC
David Preminger, Keller Rohrbach, New York, NY
Robert Rachal, Proskauer Rose LLP, New Orleans, LA

9:50 a.m. – 10:15 a.m.

Chapter 4: Reporting and Disclosure

1. Recent Developments including 204(h) litigation, Form T-1, implementation of PPA requirements
2. Section 101(k)

Speakers:

Jon Bourgault, Groom Law Group, Washington, DC
Pat DiCarlo, Alston & Bird LLP, Atlanta, GA
Liz Masson, McCarthy Johnson & Miller, San Francisco, CA
Chris Scheithauer, McDermott Will & Emery, Irvine, CA

10:15 a.m. – 10:30 a.m.

Refreshment Break (*Magnolia Willow Foyer*)

10:30 a.m. – 11:05 a.m.

Chapter 15: Employment Discrimination

1. Last term's Supreme Court cases - *Kentucky Retirement & Meacham*
2. *Hulteen v. AT&T*
3. Impact of ADA amendments on benefit plans.

Speakers:

Ashley Abel, Jackson Lewis LLP, Greenville, SC
Michael T. Harren, Chamberlain D'Amanda, Rochester, NY
Ian Morrison, Seyfarth Shaw LLP, Chicago, IL

11:05 a.m. – 11:30 a.m.

Chapter 9: Title IV

1. PBGC enforcement of "downsizing liability" under ERISA Section 4062(e)
2. PBGC's plan restoration initiative
3. Update on "termination premium" issues
4. Change in PBGC's investment policy
5. PBGC regulatory implementation of PPA.

Speakers:

Harold Ashner, Keightley & Ashner LLP, Washington, DC
David Fusco, Schwarzwald McNair & Fusco LLP, Cleveland, OH
Jim Keightley, Keightley and Ashner LLP, Washington, DC

11:30 a.m. – 11:55 p.m.

Chapter 18: Collectively Bargained Plans

1. Arbitration of Benefit Issues Under CBA
2. Recent Appellate Decisions

Speakers:

Rick Dennerline, Fillenwarth Dennerline Groth, Indianapolis, IN
Patrick Spangler, Vedder Price, Chicago, IL
John Stember, Stember Feinstein et al, Pittsburgh, PA

1:55 a.m. – 12:30 p.m.

Committee Business Meeting