

# CLE SESSIONS

## ALL CLE SESSIONS PRESENTED BY HAYSTACKID

7:30–8:30 A.M.

### SESSION 1A • GRAND BALLROOM A

#### OBAMA'S IMMIGRATION EXECUTIVE ACTIONS: WHAT IT WILL MEAN FOR EMPLOYERS

*Speaker: Roger Tsai, Attorney/Of Counsel, Holland & Hart LLP*

On Nov. 20, 2014, President Obama announced a series of executive actions that will change U.S. immigration policies—and the controversy over this far-reaching action is continuing. Hear about the issues these executive actions cover, a brief history about the executive actions, and up-to-the minute facts about the effects of the actions on employers.

### SESSION 1B • GRAND BALLROOM B

#### THE NEW WATERS OF THE UNITED STATES RULE UNDER THE CLEAN WATER ACT

*Speaker: Mark Ryan, Attorney, The Law Firm of Mark Ryan*

Since 1972, the Clean Water Act has applied to all “waters of the United States.” In *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* (2001) and *Rapanos v. United States* (2006), the Supreme Court handed down decisions limiting the reach of the act—and creating much confusion. Learn about attempts to fix the problems caused by creating a new EPA/Corps of Engineers rule—from one of the rule’s authors.

9:00–10:00 A.M.

### SESSION 2A • GRAND BALLROOM A

#### MARRIAGE EQUALITY AND NEW FRONTIERS IN EQUAL PROTECTION

*Speakers: David C. Reymann, Shareholder, Parr Brown Gee & Loveless (Moderator); Hon. Candy Dale, U.S. Magistrate Judge, U.S. District Court for the District of Idaho; Clifford Rosky, Professor of Law, S.J. Quinney College of Law, University of Utah; Hon. Dale Kimball, U.S. District Judge, U.S. District Court for the District of Utah*

Between 2013 and 2015, a number of federal decisions held laws banning same-sex marriage to be unconstitutional. Two of these, *Kitchen v. Herbert* and *Otter v. Latta*, were issued by Hon. Robert Shelby of the District of Utah and Hon. Candy Dale of the District of Idaho, respectively. After previously denying certiorari in all such cases, the U.S. Supreme Court has now agreed to hear the appeal of four cases from the Sixth Circuit—consolidated as *Obergefell v. Hodges*. Hear the discussion on the decision (expected to be issued this summer) and its impact on the United States.

### SESSION 2B • GRAND BALLROOM B

#### THE CARROT AND THE STICK: HOW TO EFFECTIVELY USE RULE 68 OFFERS AND WHEN TO REJECT THEM

*Speakers: Rebekah L. Bailey, Attorney, Nichols Kaster, PLLP; John H. Lassetter, Attorney, Littler Mendelson, PC; Anna P. Prakash, Attorney, Nichols Kaster PLLP*

Offers of Judgment under F.R.C.P. 68 provide an effective and often underused tool in civil litigation that can help entice the early dissolution of weak or even meritorious cases. Hear about successful offers and tips for maximizing their effectiveness; offers that failed to deliver the desired result; the cost-benefit analysis plaintiffs must undergo in deciding whether to accept or reject, and the consequences of rejecting.

10:15–11:15 A.M.

## SESSION 3A • GRAND BALLROOM A

### WHAT IS A PONZI: PROVING A PONZI AND THE IMPLICATIONS OF A PONZI FINDING

*Speakers: Hon. David O. Nuffer, Chief U.S. District Judge, District of Utah (Moderator); Peggy Hunt, Partner, Dorsey & Whitney LLP; Gil A. Miller, Rocky Mountain Advisory LLC; Cheryl M. Mori, Senior Advisor, U.S. Securities and Exchange Commission, Salt Lake Region*

Ponzi schemes have been a topic of national discussion in recent years, especially in the wake of mega schemes perpetrated by the likes of Bernie Madoff, Allen Stanford, and Tom Petters. This social phenomenon has played out in the federal courts and has resulted in the development of a considerable body of law. Learn about the implications not only in securities law enforcement but also in the ability of trustees and equity receivers to “clawback” compensation and other perks paid to those involved in the scheme as well as profits paid to unwitting investors.

## SESSION 3B • GRAND BALLROOM B

### RETURNING OUR WARRIORS TO WORK: EMPLOYMENT LAW ISSUES

*Speakers: Donna Phillips Currault, Member, Gordon Arata McCollam Duplantis & Eagan LLC; Frank J. McGovern, LTC, Regional Defense Counsel, PA Army National Guard; Corie J. Tarara, Shareholder, Seaton, Peters & Revnew P.A.; Thomas Roughneen, Attorney, Strazza & Roughneen, LLC*

National attention is focused on the goal of returning military personnel to productive roles in the workplace, with special focus on wounded warriors. While the goal is worthwhile, a number of legal issues arise in returning service members to the workplace. Hear in-depth discussion on the application of USERRA, FMLA, and ADAAA; the interaction between military processes and legal requirements for employers; and best practices from the perspective of employers.

11:30 A.M.–12:30 P.M.

## SESSION 4A • GRAND BALLROOM A

### NEW DEVELOPMENTS IN FEDERAL INDIAN LAW: TRIBAL COURT JURISDICTION OVER NON-INDIANS AND VIOLENCE AGAINST WOMEN'S ACT IMPLEMENTATION

*Speakers: D. Michael McBride, Director/Shareholder, Crowe & Dunlevy; Doug Endreson, Partner, Sonosky, Chambers, Sachse, Endreson & Perry, LLP; Susan Huntsman, Director/Shareholder, Crowe Dunlevy*

Jurisdiction over non-Indians is the most hotly contested federal Indian law question in modern jurisprudence. Since the seminal case of *Montana v. United States* (1981), the Supreme Court and Congress have grappled with the extent to which Indian tribes may exert jurisdiction over non-Indians who interact with tribes and tribal governments. Hear an overview of the current state of jurisdiction over non-Indians and non-members and learn about hot topics and current litigation, including a brief survey of tribal courts at the cutting edge of implementing VAWA.

## SESSION 4B • GRAND BALLROOM B

### THE HOTTEST TREND IN FEDERAL COURT LITIGATION: THE FALSE CLAIMS ACT

*Speaker: Jeremy Kernodle, Partner, Haynes and Boone, LLP*

The False Claims Act is a Civil War-era statute that has suddenly become the focus of all federal court litigators. From manufacturers to healthcare providers to financial institutions, corporate America is finding itself in the crosshairs of the government's primary weapon for fraud enforcement. Explore the reasons for increased activity by the federal government, hear about recent settlements and decisions in key FCA cases, and learn what to expect in the near future.

# CLE SESSIONS

2:15–3:15 P.M.

## **SESSION 5A • GRAND BALLROOM A**

### **ZEALOUS ADVOCACY AND COOPERATION: NOT MUTUALLY EXCLUSIVE CONCEPTS IN DISCOVERY**

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*Speakers: Jason M. Glass, Vice President of Client Services, HaystackID LLC (Moderator); Benjamin Berman, General Counsel, KAYAK; David Thomas, Shareholder, Greenberg Traurig; Magistrate Judge Evelyn Furse; David A. Goodwin, Gustafson Gluek PLLC; James M. Vant, Greenberg Traurig, LLP*

FCRP Rule 1 counsels the bench and bar to pursue the “just, speedy, and inexpensive determination of every action.” Yet, this rule is stretched to its breaking point when counsel become embroiled in discovery disputes that should have been avoided, or otherwise when counsel do not handle ediscovery in a collaborative way. Learn the tools needed to control the cost of discovery and minimize dispute through cooperation, leveraging the latest technology and ediscovery strategy and the use of the rules, while still being a zealous advocate for your clients.

## **SESSION 5B • GRAND BALLROOM B**

### **THE IMPACT OF LEGAL MARIJUANA USE ON THE WORKPLACE**

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*Speakers: Jennifer Schrack Dempsey, Partner, Andersen Banducci PLLC; Alyson A. Foster, Of Counsel, Andersen Banducci PLLC*

At least 23 states permit medical marijuana use, and four states and the District of Columbia have legalized recreational use. Federal law, however, still criminalizes marijuana use. Hear about new risks and issues for employers and employees at the intersection of marijuana legislation and workplace laws.



3:30–4:30 P.M.

## SESSION 6A • GRAND BALLROOM A

### ANATOMY OF A PRO BONO CIVIL RIGHTS TRIAL AND APPEAL: WHY FBA LAWYERS SHOULD LITIGATE PRO BONO PRISONER RIGHTS CASES

*Speakers: Nilay U. Vora, Senior Counsel, Lee Tran & Liang; Mercedes Montagnes, Staff Attorney, Promise of Justice Initiative; Chiraag Bains, Senior Counsel, U.S. Department of Justice Civil Rights Division*

The “perfect” pro bono litigation opportunity would involve a significant federal issue requiring a litigator’s specific skills set—litigation, trials, and appeals. Prisoner rights litigation provides precisely such opportunities, as shown by the high-profile Eighth Amendment case *Ball v. LeBlanc* (2013), which resulted in a trial court order that ended the confinement of Louisiana Death Row inmates in extreme heat conditions. Learn about this unique case, including trial and appeal strategies in prisoner rights, strategies for seeking the support of the DOJ Civil Rights Division through statements of interest and amicus briefing, and how other prisoner rights litigation can provide similar opportunities.

## SESSION 6B • GRAND BALLROOM B

### THE RENEWED DEBATE OVER UNPUBLISHED APPELLATE OPINIONS

*Speakers: Steven Klepper, Principal, Kramon & Graham, PA; Hon. Andre Davis, Senior Circuit Court Judge, U.S. Court of Appeals for the Fourth Circuit; Hon. Carolyn McHugh, Circuit Judge, U.S. Court of Appeals for the Tenth Circuit; Michelle Olsen, Attorney and Legal Journalist, Appellate Daily*

In his dissent from the denial of certiorari in *Plumley v. Austin* (2015), Justice Clarence Thomas wrote that it was “hard to imagine a reason that the Court of Appeals would not have published this opinion except to avoid creating binding law for the Circuit.” Explore the historical and constitutional context of *Plumley* and learn about publication practices in the various circuits—including the reasons that a court of appeals may decide not to publish an opinion; variation across the appellate circuits; and the benefits and costs of unpublished opinions for courts, practitioners, and litigants.

# CLE SESSIONS

7:30–8:30 A.M.

## SESSION 7A • GRAND BALLROOM A

### THE AFFORDABLE CARE ACT AND THE IMPACT OF HOBBY LOBBY AND KING

*Speaker: Rachel Rose, Principal, Rachel V. Rose Attorney at Law, PLLC*

In light of the Supreme Court's ruling in *Hobby Lobby* and the impending decision in *Burwell v. King*, there are a multitude of legal items that impact businesses in a variety of ways—various areas of employment law and health care law will be impacted. Hear an explanation of the relevant items of the Affordable Care Act in relation to the IRS regulations and the two recent U.S. Supreme Court cases.

## SESSION 7B • GRAND BALLROOM B

### PRACTICAL STRATEGIES FOR ADDRESSING THE EVOLVING PATENT-DAMAGES LANDSCAPE

*Speakers: Clarke B. Nelson, Managing Director, Berkeley Research Group; David Wright, Partner/Shareholder, Maschoff Brennan Laycock Gilmore Israelsen & Wright; Blake English, Managing Director, Berkeley Research Group; Paul D. Tripodi II, Partner, Wilson Sonsini Goodrich Rosati*

Several damages-related, precedent-setting decisions in 2014 and 2015 have affected the ever-evolving landscape of patent infringement damages. Join the discussion on what, if any, bright lines exist for damages today; whether more clarity is needed from the Federal Circuit; and the practical impact of recent decisions on legal strategies and the impact to expert witnesses.

8:45–9:45 A.M.

## SESSION 8A • GRAND BALLROOM A

### EFFECTIVE REPRESENTATION IN MEDIATION

*Speakers: Simeon H. Baum, Resolve Mediation Services, Inc.; Hon. Karoline Mehalchick, U.S. Magistrate Judge, Middle District of Pennsylvania; Hon. Michael J. Newman, U.S. Magistrate Judge, Southern District of Ohio; Robert S. Clark, Partner, Parr Brown Gee & Loveless; Jeffrey Kichaven, Principal Mediator, Jeff Kichaven Commercial Mediation*

Since pilot programs were started in district courts around the country nearly 25 years ago, mediation programs have spread throughout the nation. Learn about differences in mediation—and needed preparation—with private mediators, with Court-annexed panelists, and with U.S. magistrate judges, and how to maximize the value that can be found in mediation.

## SESSION 8B • GRAND BALLROOM B

### FEDERAL INTERNET LAW & CIVIL REMEDIES: HOW FEDERAL STATUTES IMPACT CIVIL DISPUTES INVOLVING ELECTRONIC MEDIA AND CYBERSPACE

*Speakers: Kevin A. Maxim, Principal, The Maxim Law Firm, P.C.; Katherine González-Valentín, Capital Member, Ferraiuoli LLC; John W. Mackay, Shareholder, Ray Quinney & Nebeker; Stefanie C. Moon, S.C. Moon Law*

The more prominent federal acts governing electronic media and cyberspace—including ACPA and CAN-SPAM among others—come with their own jurisdictional, user identification, and discovery issues. Gain an understanding of the types of conduct regulated by federal statutes to better counsel clients when electronic media and internet-related disputes arise.

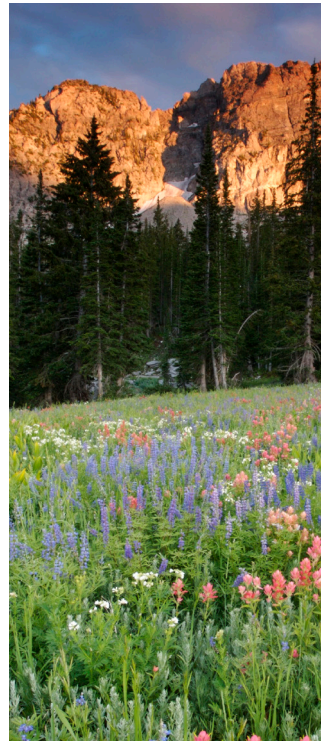
8:45–9:45 A.M. (CONTINUED)

**SESSION 8C • GRAND BALLROOM C**

**“ASSISTING RE-ENTRY TO OUR COMMUNITIES” (ARC) PROGRAM IN THE DISTRICT OF UTAH**

*Speakers: Hon. Clark Waddoups, U.S. District Judge, District of Utah; Hon. Brooke C. Wells, Chief U.S. Magistrate Judge, District of Utah; Hon. Dustin B. Pead, U.S. Magistrate Judge, District of Utah*

Twenty years of research demonstrates that implementation of evidence-based practices could result in a large reduction in recidivism—up to 30 percent. The District of Utah has established an innovative program that connects all stakeholders in the federal criminal system to utilize EBPs to reduce recidivism and promote re-entry. Hear from the program co-chairs the importance of using EBPs in the re-entry process; how ARC identifies and evaluates EBPs; and what specific EBPs have been adopted to date.



10:00–11:00 A.M.

**SESSION 9A • GRAND BALLROOM A**

**BANKRUPTCY FOR NON-BANKRUPTCY ATTORNEYS: NAVIGATING THE UNFAMILIAR WORLD OF BANKRUPTCY COURTS AND AVOIDING COMMON PITFALLS**

*Speakers: Lon A. Jenkins, Of Counsel, Financial and Restructuring Group, Dorsey & Whitney; Hon. Joel T. Marker, U.S. Bankruptcy Judge for the District of Utah; Brian M. Rothschild, Senior Associate, Bankruptcy and Corporate Restructuring Group, Parsons Behle & Latimer*

There are a hundred ways that a case could end up in the complex, rule-driven, and counterintuitive world of bankruptcy court. Often, practitioners are left wondering whether to turn the case over to a bankruptcy attorney or attempt—perhaps uncomfortably—to navigate unfamiliar waters with full-time bankruptcy practitioners circling on all sides of the boat. Explore the similarities and differences between cases in federal district court and federal bankruptcy courts and learn specific skills for navigating the differences.

**SESSION 9B • GRAND BALLROOM B**

**OVERVIEW OF FEDERAL CRIMINAL ANTITRUST ENFORCEMENTS AND TIPS ON EFFECTIVELY RESPONDING TO THE SAME**

*Speakers: Darin Sands, Attorney, Lane Powell; William Frank Carroll, Attorney, Cox Smith Matthews Inc.; Brent Snyder, Deputy Assistant Attorney General, U.S. Department of Justice; Scott Wagner, Partner, Bilzin Sumberg*

The DOJ Antitrust Division has been increasingly aggressive in cracking down on price fixing and bid rigging conspiracies across the country. The scope of criminal and civil exposure for both the company and its executives can be substantially impacted by the legal decisions made in the immediate hours and days after realization that illegal collusive activity could be occurring. Learn about the legal framework governing price fixing investigations and practical tips on responding when a client is the subject of a law enforcement raid arising out of alleged violations of federal criminal antitrust law.

# CLE SESSIONS (CONTINUED)

10:00–11:00 A.M. (CONTINUED)

## SESSION 9C • GRAND BALLROOM C

### **MONEYBALL TAKES THE BENCH: A STATISTICAL ANALYSIS OF JUDGES AND COURTS**

*Speaker: Scott Young, Lawyer, Shareholder, Snow, Christensen & Martineau*

In the book *Moneyball*, Michael Lewis analyzed the career of Billy Beane, who famously introduced statistical techniques into baseball scouting. By using a similar statistics strategy to analyze judicial decisions, we can learn the tendencies of a judge—such as how likely they are to grant summary judgment in a certain case, what kinds of evidence they find persuasive, and how long they take to render decisions. Hear about one practitioner’s statistical strategy toward a comprehensive and objective analysis of the tendencies of judges and courts.

11:15 A.M.–12:15 P.M.

## SESSION 10A • GRAND BALLROOM A

### **AVOIDING LEGAL MALPRACTICE CLAIMS**

*Speaker: Matthew Lalli, Partner, Snell & Wilmer*

Most lawyers who are sued for legal malpractice feel like the police officer convicted of a crime. Like the police, lawyers tend to view themselves as the ones who solve problems, undo mistakes, and provide comfort and security to clients who usually are distressed. Almost all lawyers who become defendants use terms like “agony,” “hell,” and “a lot of sleepless nights.” An ounce of prevention is worth a pound of cure—hear about what legal malpractice is and is not; the reasons lawyers get sued; and tips to avoid legal malpractice claims or to enhance the chances of success should a claim be filed.

## SESSION 10B • GRAND BALLROOM B

### **THE OBAMA ADMINISTRATION’S REFORM OF FEDERAL GRANTS AND CO-OPERATIVE AGREEMENTS**

*Speaker: Jana Patterson Gagner, Senior Counsel, Federal Assistance Law Division, U.S. Department of Commerce*

The United States spends more than \$500 billion annually on federal grants and cooperative agreements. At the direction of President Obama, the White House Office of Management and Budget issued a joint interim final rule to implement new guidance—streamlining financial management, easing the administrative burden, and strengthening oversight to reduce risks of waste, fraud, and abuse. Learn about key developments, which affect funding received by state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations.