

HECKERLING INSTITUTE ON ESTATE PLANNING University of Miami School of Law

57th Annual Heckerling Institute on Estate Planning

January 9 - 13, 2023

ORLANDO WORLD CENTER MARRIOTT RESORT AND CONVENTION CENTER

Orlando, Florida

Virtual Attendance Also Available

e Reconnect at the Reconnect at the Institute.

SCOPE



Tina Portuondo
Director
Heckerling Institute on
Estate Planning

The Heckerling Institute on Estate Planning is the nation's premier conference for estate planning professionals, offering unparalleled educational and professional development opportunities for all members of the estate planning team. The 57th Heckerling Institute covers topics of timely interest to attorneys, trust officers, accountants, charitable giving professionals, elder law specialists, wealth management professionals, and nonprofit advisors.

The educational programming, presented by the nation's leading experts, examines a wide range of today's most important tax and non-tax planning issues and offers practical guidance on planning effectively in the current uncertain economic and legal environments. The **Recent Developments Panel** analyzes the significant tax and non-tax developments of 2022, including the potential planning implications of the results of the midterm elections, and of enacted or anticipated legislation. The panel reconvenes later in the week to answer

questions submitted by attendees. The *Lloyd Leva Plaine Distinguished Lecture* features **Tax Court Judge Maurice B. Foley** offering his insights on how a judge's prior legislative and executive branch experience may impact their judicial philosophy. During the remainder of the week attendees can benefit from programs covering a broad range of advanced level planning topics, or can customize their educational experience with the following specialized program tracks:

Focus Series – Planning for the Middle-Rich: This series of programs provides intelligent, implementable, and interesting planning ideas for your middle-rich clients, those who are too rich to keep everything and too poor to transfer everything. Topics include marital deduction planning, charitable planning, asset protection, retirement planning, preserving the family farm, current trends in special needs and elder law, and ethical and privilege issues in assisting clients with gifting or preparing the IRS Form 709.

Planning with Trusts: This series of programs analyzes the factors to consider in choosing a jurisdiction for a long- term trust (including practical tips on drafting and administration), offers a review of recent fiduciary cases, provides an advanced level analysis of the developing law of trusts, examines the legal issues and practical considerations involved in removing a recalcitrant trustee, and offers an update on planning with special needs trusts.

Business and Financial Assets: These programs explore the tax benefits, pitfalls and opportunities surrounding planning with installment obligations, explain the uses and consequences of split dollar life insurance, and examine the real options for planning for retirement benefits under the SECURE Act.

Litigation: These programs cover the potential litigation considerations that may be built into planning opportunities including the potential application of judicially created anti-abuse doctrines to the wealth transfer tax area, the do's and don'ts of removing a recalcitrant trustee, the issues involved in enforcing a charitable gift agreement, and assisting clients with gifting or preparing IRS Form 709.

International Planning: These sessions provide guidance on advising non-U.S. persons on the best structure for investing into U.S. markets, including income and transfer tax considerations, withholding, the application of bilateral tax treaties, disclosure and reporting issues, and the need to coordinate planning in the country of residence.

Charitable Giving and Philanthropy: These sessions explore the legal and practical issues impacting the negotiation, drafting and enforcement of charitable gift agreements, including suggestions on drafting agreements that address future changes, the enforceability of charitable pledges, and standing to sue to enforce the terms of the gift. **CHR**

Ethics: This track of programs explores the issues surrounding the termination of a client relationship, including some of the most common reasons for termination, the best practices in terminating the relationship and the ethical considerations involved. The series will also examine the ethical and privilege issues involved in assisting clients with gifting or preparing the IRS Form 709. Finally, the series provides an update on how anti-money laundering initiatives affect estate planners, including transparency initiatives and ethical considerations.

Fundamentals: These programs provide an in-depth look at marital deduction planning and examine the uses and tax consequences of split dollar life insurance premium financing.

We hope to see you in Orlando on January $9^{th} - 13^{th}$ for the 57^{th} Annual Heckerling Institute on Estate Planning. Although it will be possible to attend virtually, we encourage you to join us in-person in Orlando. On-site attendees will enjoy connecting with colleagues both old and new at social and networking events scheduled throughout the week-long Institute. On-site attendees will also enjoy the opportunity to review the latest in technology, goods and services in our unique exhibit hall dedicated entirely to the estate planning industry. Please join us in Orlando to take advantage of this exciting professional opportunity!

INSTITUTE FACULTY

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Institute Schedule

Sunday, January 8, 2023

Eastern Time (ET)

2:00 – 6:00pm Conference Check-in

FS

Monday, January 9, 2023

8:00 – 10:00am Conference Check-in and Networking in the Exhibit Hall

10:00am - 12:00pm FUNDAMENTALS PROGRAM

Using and Misusing the Marital Deduction

Lauren J. Wolven ◆ Julie Miraglia Kwon ◆ Cynthia G. Lamar-Hart

The marital deduction is often taken for granted because the law surrounding the deduction has been constant for several decades. The deduction often has subtleties, however, and can create pitfalls for the unwary. This program will provide a detailed review of the tax requirements and application of the marital deduction, and will offer suggestions for making use of the nuances of this often overlooked tool.

12:00 – 1:30pm Lunch Break and Networking in the Exhibit Hall

1:30 – 1:40pm Introductory Remarks

Tina Portuondo, Director, Heckerling Institute

1:40 – 3:00pm Recent Developments 2022 3:20 – 4:50pm

Steve R. Akers * Samuel A. Donaldson * Beth Shapiro Kaufman

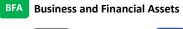
Materials by: Steve R. Akers, Turney P. Berry, Samuel A. Donaldson, Stephen W. Murphy, Jeffrey N. Pennell, Charles A. Redd, William I. Sanderson, and Howard M. Zaritsky

Edited by: Ronald D. Aucutt

The Recent Developments panel featuring three of the nation's leading estate planning experts will analyze the most significant developments from 2022, including the potential planning implications of the mid-term elections and of recent or anticipated legislation or regulations. The panel will reconvene later in the week to answer questions submitted by attendees.

3:00 – 3:20pm Networking Break in the Exhibit Hall

6:00 – 7:00pm Institute Welcome Reception





Tuesday, January 10, 2023

8:30 - 9:30am **Networking in the Exhibit Hall**

9:30 - 10:20am Not Too Rich, Not Too Poor: Goldilocks Planning for the Middle-Rich Clients Who Need Our Help

Turney P. Berry

Planning for clients who are too rich to keep everything, and too poor to transfer everything, remains an estate planning challenge. These clients typically lack family offices that can help implement and oversee our most complex planning, yet oftentimes it is just that planning that the client needs. And, of course, the clients need everything else too - charitable planning, asset protection, retirement planning, preserving the family farm and vacation cabin, and so on. This presentation will discuss intelligent, implementable, and interesting ideas for the middle-rich (even if we can't quite define who they are).

It's a Nice Place to Visit, but Do You Want to Live There? 10:25 - 11:15am

> Amy K. Kanyuk The dramatic evolution of trust law over the past quarter century presents valuable opportunities to choose a jurisdiction for a dynastic trust based on a client's specific objectives. This session will provide an overview of the many factors to consider in choosing a jurisdiction for a new long-term

11:15 - 11:35am **Networking Break in the Exhibit Hall**

trust.

Lloyd Leva Plaine Distinguished Lecture 11:35am-12:25pm

What's Under The Robe?

Judge Maurice B. Foley

Prior legislative and executive branch experience may impact a judge's judicial philosophy. You'll learn how.

12:25 - 2:00pm **Lunch Break and Networking in the Exhibit Hall**

You're Fired! Whether, When, and How to Terminate Representation of a Client 2:00 - 2:50pm (Including Ethical Considerations)

Bruce M. Stone

2:55 - 3:45pm

BFA

Estate planning professionals spend a lot of time and effort on generating new clients and cultivating existing client relationships. Sometimes, however, it is either advisable or necessary to terminate a client relationship. What are some of most commonly encountered reasons to fire a client? What are the best practices in terminating a client relationship? What are the ethical considerations in terminating representation of a client who wants to continue with the representation? If the decision is made to terminate representation of a client, how should the decision be documented and communicated to the client?

Goblins Lamentation List: Unscrambling "Installment Obligations"

Paul S. Lee

With income tax rates likely to be higher in the future and with the popularity of sales to IDGTs in estate planning, understanding the income tax aspects of taxable installment obligations versus IDGT installment notes versus intrafamily promissory notes is crucial. This presentation will discuss the income tax benefits, pitfalls, planning opportunities, and the unknowns surrounding taxable and nontaxable deferred payment arrangements commonly used by taxpayers.

Business and Financial Assets

CHR Charitable Giving

Ethics

Focus Series

FUND Fundamentals

INT International







3:45 – 4:05pm Networking Break in the Exhibit Hall

4:05 - 4:55pm

LIT

"You're No Good, You're No Good, You're No Good, Baby, You're No Good" – Saying Goodbye to the Recalcitrant Trustee

TRU

Craig M. Frankel

The beneficiaries do not like the trustee, but the trustee refuses to step down. How can a beneficiary force the removal of a recalcitrant corporate or individual trustee? Is it even a good idea to try? Does the Uniform Trust Code offer any help?

Wednesday, January 11, 2023

8:30 – 9:30am Networking in the Exhibit Hall

9:30 - 10:20am

Current Trends in Special Needs and Elder Law

FS

Bernard A. Krooks + Tara Anne Pleat

The SECURE Act made major changes to how estate planners address retirement accounts. Recent proposed regulations attempted to clarify (sometimes successfully and sometimes not) certain issues, including how to obtain the stretch for beneficiaries who are disabled or chronically ill and how a trust can qualify for life expectancy payouts. The presenters will address the interplay between special needs planning and retirement accounts, as well as other developments including supported decision making, the recent U.S. Supreme Court decision in *Gallardo v. Marstiller*, and the effects changes in the delivery of services to seniors and individuals who are disabled are having on the advice being given to clients.

10:25 – 11:15am

America the Gradual: An Update on How Anti-Money Laundering Initiatives Affect Estate Planners

ETH

M. Read Moore • Nancy G. Henderson

INT

The U.S. government has long been a cheerleader in world-wide efforts to enlist "gatekeepers" such as lawyers, accountants, title companies, banks, and trust companies in the fight against money laundering, but the United States has lagged behind most of its peer countries in implementation of gatekeeper-related legislation and regulation. This is now gradually changing, with the U.S. slowly, joining its peer countries in regulating gatekeepers in ways that reflect American traditions and sensibilities. This presentation will cover recent developments in transparency initiatives that affect estate planners, including ethical considerations, the Corporate Transparency Act, identifying beneficial owners of financial accounts, and the continued attempts to make lawyers part of law enforcement.

11:15 - 11:35am

Networking Break in the Exhibit Hall

11:35am-12:35pm

Question and Answer Panel

Steve R. Akers * Samuel A. Donaldson * Beth Shapiro Kaufman

The panel will answer questions from attendees regarding timely estate planning topics.

12:35 – 2:00pm Lunch Break and Networking in the Exhibit Hall

BFA Business and Financial Assets





Focus Series

FUND Fundamentals









Session I-A



Split Dollar Is Still Alive and Kicking - Fundamentals and Intergenerational Update



Donald O. Jansen ◆ G. Michelle Ferreira ◆ Mary Ann Mancini

Twenty years after final regulations, the panel will summarize the uses of split dollar life insurance premium financing, explain when economic benefit or loan regimes make sense and discuss income and transfer tax consequences. The recent pro-taxpayer Tax Court intergenerational split dollar decision will be highlighted by the attorney who tried the case.

Session I-B

Practical Planning for Special Needs Beneficiaries



Bernard A. Krooks ◆ Robert B. Fleming ◆ Tara Anne Pleat

With changes as a result of the SECURE and ABLE Acts (and new regulations for both), the landscape for special needs planning is shifting; however, some things remain unchanged. The panelists will review case studies focusing on how to plan for retirement accounts when there is a special needs beneficiary, and will also discuss special needs trust funding and administration issues, including the taxation of special needs trusts.

Session I-C

Review of the Past Year's Significant, Curious, or Downright Fascinating Fiduciary Cases

Dana G. Fitzsimons Jr.

This session will review selected reported fiduciary litigation decisions from 2022 that relate to multiple areas of estate planning, estate and trust administration, the fiduciary duties of agents, administrators, trustees, and other fiduciaries, related trial practice, and identifying and navigating contemporary fiduciary challenges.

3:30 - 3:50pm

Networking Break in the Exhibit Hall

3:50 - 5:20pm

SPECIAL SESSIONS II (Concurrent Sessions)

Session II-A

Upside Down with a Perfect View

Amy K. Kanyuk ◆ Todd A. Flubacher ◆ Miriam Wogan Henry ◆ Sarah Moore Johnson

The myriad of factors to consider in choosing a jurisdiction for a new long-term trust can be overwhelming. The panel will discuss the overall importance of the various factors, and share their practical experiences in drafting and administering trusts intended to last for multiple generations.

Session II-B



Running the Gamut on Planning for the Middle-Rich

Turney P. Berry ◆ Robert K. Kirkland ◆Suzanne Brown Walsh ◆ Melissa J. Willms

This presentation will further discuss intelligent, implementable, and interesting ideas for the middlerich (even if we can't quite define who they are).

Session II-C



So You Want a New Trustee?

Craig M. Frankel ◆ Michael H. Barker ◆ Jaclyn G. Feffer

The panel will discuss the do's and don'ts for removing a recalcitrant trustee. Plus stories from the trenches.

Thursday, January 12, 2023

8:30 – 9:30am Networking in the Exhibit Hall

9:30 – 10:20am ____ Structuring Inbound Investments into U.S. Markets (Layover Required)

BFA

Scott A. Bowman

Advising a non-U.S. person on the ideal structure for investing into U.S. markets is complex. This presentation will take you to cruising altitude for a view of the tax considerations that underlie structuring decisions and explore the application of these structures to common objectives of non-

U.S. investors. Be sure to pack a carry-on!

10:25 – 11:15am "With Strings Attached": Designing and Documenting Charitable Gifts Today

CHR

Alan F. Rothschild, Jr.

Donors increasingly want significant control and input over the use of their charitable gifts. This session will review the legal and practical issues impacting the negotiation, drafting and enforcement of a charitable gift agreement, including race and gender-based grant making, donor involvement post-gift, the enforceability of charitable pledges and standing to sue to enforce the terms of the gift.

11:15 – 11:35am Networking Break in the Exhibit Hall

11:35am-12:25pm Watch Your Steps--Don't Abuse Substance in Transfer Tax Transactions

Carol A. Harrington

For decades, courts have applied judicially created anti-abuse doctrines to transactions despite literal compliance with tax statutes. These doctrines overlap to some extent and include substance over form, business purpose, economic substance, and step transaction. These doctrines have been applied liberally in the income tax area but more sparingly in the transfer tax area. This discussion will explain these doctrines, how they have and have not been applied in the transfer tax area, and explore possible ways to protect your transaction from these doctrines.

12:25 – 2:00pm Lunch Break and Networking in the Exhibit Hall

2:00 – 3:30pm SPECIAL SESSIONS III (Concurrent Sessions)

Session III-A

Meet the New Trust: Same as the Old Trust?

M. Read Moore • Christopher P. Cline • Stacy E. Singer

In the last two decades many states have significantly changed their law of trusts, including such things as decanting, directed trusts, nonjudicial agreements, and keeping — or not keeping — beneficiaries informed about the administration of trusts. This special session will consider whether as a practical matter recent significant changes in trust law have changed the ways lawyers draft trusts, how trustees administer trusts, and how trust controversies are resolved.





Session III-B



Shedding More Light on Planning with Installment Obligations

Paul S. Lee ◆ Cassady V. Brewer

This panel presentation will further analyze the income tax benefits, pitfalls, planning opportunities, and the unknowns surrounding taxable and non-taxable deferred payment arrangements commonly used by taxpayers.

Session III-C



Diving Deeper into Charitable Gift Agreements



Alan F. Rothschild, Jr. ◆ Michele A.W. McKinnon ◆ Shirley J. McLaughlin

The panel will discuss real life examples of how charitable gifts get off track and offer practical suggestions for drafting gift agreements that effectively address future changes in circumstances, the use of race and gender gift restrictions, donor involvement, naming (and un-naming) rights, and amendments to the gift agreement.

3:30 - 3:50pm

Networking Break in the Exhibit Hall

3:50 - 5:20pm

SPECIAL SESSIONS IV (Concurrent Sessions)

Session IV-A



The Gift that Keeps on Giving: Ethics and Privilege Landmines with Gifts and Form 709

Stephanie Loomis-Price • Christine S. Wakeman



Do you prepare gift tax returns? Have you ever thought, "my clients make gifts, but I leave the IRS Form 709 preparation to someone else"? If you answered yes to either of these questions, you should attend this presentation to learn more about how to navigate the numerous ethical and privilege issues for those who assist clients with gifting or preparing IRS Form 709.

Session IV-B



From Take Off to Touch Down - A Comprehensive Look at Inbound Investments into U.S. Markets



INT Scott A. Bowman Michael Rosen-Prinz Dina Kapur Sanna

This panel discussion will take a comprehensive look at common inbound investments structures. Beyond mere U.S. estate and income taxation, non-U.S. persons investing into U.S. markets must confront withholding tax considerations, the application of bilateral tax treaties, planning for a step-up in U.S. income tax basis and a variety of disclosure and reporting issues. Add to this the need to coordinate the tax and non-tax considerations in their countries of residence. Turbulence is expected.

Session IV-C

Take a Dive into the Sunshine State (Law) - The Essential Update on Florida Law

Shane Kelley ◆ Elaine M. Bucher ◆ John C. Moran

The panel will discuss the most important developments in both statutory and case law in Florida over the past two years that every out-of-state practitioner should know.

BFA Business and Financial Assets

CHR Charitable Giving

Ethics

Focus Series

Fundamentals



INT International





Trusts

Friday, January 13, 2023

8:30 – 9:30am Networking in the Exhibit Hall

Friday

9:30 - 11:00am

Down and Dirty Estate Planning for Retirement Benefits

BFA

Natalie B. Choate

This session will review the client's real options under SECURE for leaving benefits to their spouse, children, or other beneficiaries, including how to draft the trust to carry out the plan, from "seethrough status" to "toggles".

11:00 – 11:20am Networking Break in the Exhibit Hall

11:20am – 12:20pm Wrap-Up: It Ain't Over Till It's Over

Charles A. Redd ◆ Turney P. Berry

Following long-standing tradition, the 57th Institute's final episode will feature insightful review and commentary on the excellent presentations by our stellar slate of speakers during the week. Attendees will emerge, with confidence and energy, well-prepared to tackle the most interesting and exciting estate planning challenges.

ACCREDITATION

Continuing legal education credit has been applied for in every state that has mandatory continuing legal education requirements and has been routinely granted for past Institutes. In the past, continuing education credit has also been available for other estate planning professionals, including accountants, IRS enrolled agents, financial planners, banking professionals, elder law specialists and planned giving advisors. For registrants attending the virtual Institute, continuing education credit will only be available for sessions attended in real-time. Attendees will be required to confirm their real-time participation in the sessions by responding to polling questions. We urge you to check the <u>Continuing Education</u> page of our website or contact our office in advance with questions regarding the availability of credit for a specific jurisdiction or profession, as we cannot guarantee that credit will be available in all cases.

The University of Miami School of Law is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.nasbaregistry.org.

Program Level: Advanced; Program Prerequisites: General familiarity with estate planning principles; **Delivery Method:** Group Live; Group-Internet Based; Amount of Recommended CPE credit: 28 hours; **Recommended Field of Study:** Regulatory Ethics – 3.5; Specialized Knowledge – 14.0; Taxes – 19.0; **Advance Preparation:** None; **Learning Objectives:** Upon completion of the program, participants will be able to identify, analyze and resolve practical estate planning, administration and tax reporting issues.



GENERAL INFORMATION

REGISTRATION

Early Registration Fee: \$1,100 (Registrations received prior to October 1, 2022)

Regular Registration Fee: \$1,150 (Registrations received on or after October 1, 2022)

Discounted Registration Fee for Full-Time Law School Faculty: \$800 (Please email your request to Heckerling@law.miami.edu and provide the name of the law school where the attendee is a full-time faculty member.)

To register for the Institute, please visit our website www.law.miami.edu/heckerling. Advance online registration is required. Credit card payments only. Register by Friday, November 11, 2022 to be included on the Institute Registration List. For additional information please email Heckerling@law.miami.edu. Sharing registrations is not permitted.

IN-PERSON ATTENDANCE

The registration fee for in-person attendance includes admission to the educational sessions and online access to the Institute materials. The fee also includes admission to the Monday evening Welcome Reception, continental breakfasts, networking breaks and a unique exhibit hall featuring the latest in technology, goods, and services available to estate planning professionals.

VIRTUAL ATTENDANCE

The registration fee for virtual attendance includes online access to the educational sessions and Institute materials. Approximately one week prior to the Institute, virtual attendees will receive a password protected link via email to access the live virtual presentations during Institute week. To receive continuing education credit, attendees will be required to confirm their real-time participation in the sessions by responding to polling questions.

ALL ATTENDEES

Approximately one week prior to the Institute, all registered attendees will receive a password protected link via email to access and download the Institute materials. The materials will be available on the Institute platform until February 13, 2023. The conference materials are copyrighted and may not be duplicated, reused, or shared without the written consent of the Heckerling Institute. Attendees will also be able to view recorded videos of all the sessions on the Institute platform through February 13, 2023. Continuing education credit will be granted only for sessions attended live in-person or virtually in real-time.

CANCELLATIONS, COMPLAINTS, AND REFUNDS

To cancel your registration, please send an email to <u>Heckerling@law.miami.edu</u>. Registration fees are refundable (less a \$150 administrative fee) if written notice is received by Tuesday, December 20, 2022. For more information regarding administrative policies such as complaints or refunds, please email <u>Heckerling@law.miami.edu</u> or call 305-284-4762.

CONSENT TO USE OF IMAGE

Attendance at, or participation in, the Heckerling Institute constitutes agreement to the Institute's use and distribution of the attendee's or participant's image in photographs, video, and electronic media for educational and promotional purposes. Recording of sessions is not permitted.

PUBLISHED PROCEEDINGS

The proceedings of the 56th Annual Heckerling Institute (March 2022) are available from LexisNexis. For information on orders for the 57th Annual Heckerling Institute (January 2023) contact Tracy Nash at <u>Tracy.M.Nash@LexisNexis.com</u>. For further information, please direct your inquiries to LexisNexis at 800-533-1637 or visit <u>www.lexisnexis.com</u>.

HECKERLING GRADUATE PROGRAM IN ESTATE PLANNING

The University of Miami School of Law offers a unique Graduate Program in Estate Planning taught by the nation's leading experts. The program provides comprehensive coverage of the tax and non-tax issues involved in individual and estate planning, and is ideally suited for both entry-level attorneys and more experienced attorneys interested in either expanding their current practice or transitioning to an estate planning practice. The two-semester program is offered on either a full or part-time basis. Our Joint J.D./LL.M. program allows Miami Law students and visiting students from other law schools to earn both degrees over either six or seven semesters.

For additional information on our Graduate Program visit www.law.miami.edu/estateplanning.

HEALTH & SAFETY ATTESTATION

All registered attendees, guests, and sponsors/exhibitors at the 57th Annual Heckerling Institute on Estate Planning will be required to adhere to the current University of Miami COVID-19 guidelines: https://coronavirus.miami.edu/additional-resources/meeting-and-event-guidance/index.html

Event guidelines, programming and schedule are subject to change.

HOTEL ACCOMMODATIONS

HEADQUARTERS HOTEL

Orlando World Center Marriott Resort & Convention Center (\$299 single/double)

Reservations: 800-621-0638 Cut-Off Date: December 12, 2022 or until the room block is sold out

ALTERNATE HOTEL ACCOMMODATIONS

SPRINGHILL SUITES ORLANDO LAKE BUENA VISTA IN THE MARRIOTT VILLAGE (\$207 single/double) COURTYARD ORLANDO LAKE BUENA VISTA IN THE MARRIOTT VILLAGE (\$202 single/double)

FAIRFIELD INN & SUITES ORLANDO IN THE MARRIOTT VILLAGE (\$179 single/double)

Reservations: 888-789-3090 / 407-938-9001 Cut-Off Date: December 15, 2022 or until the room block is sold out Complimentary Shuttle: Continuous to and from conference during programming hours.

SAVE THE DATE

58th Annual Heckerling Institute on Estate Planning
January 8 – 12, 2024
Orlando World Center Marriott Resort
Orlando, Florida

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