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20th National Conference on

EMPLOYMENT PRACTICES LIABILITY INSURANCE



Identifying New Opportunities in the EPLI Market, Minimizing Exposure to EPL Risks, Defending Against the Newest Claims, and Reducing Litigation and Settlement Costs

GET VALUABLE INFORMATION FROM TOP INDUSTRY EXPERTS, OUTSIDE COUNSEL AND IN-HOUSE PROFESSIONALS ON:

- Trends in the EPLI marketplace: new sources of claims and how to respond
- Adapting to expanded regulatory and enforcement efforts relating to employment practices: how companies should prepare for and respond to supervision in a multi-agency environment
- 2013's pivotal Supreme Court decisions and legislation affecting the EPLI realm, and what's ahead for 2014
- The impact of social media in the workplace: benchmarking best practices and policies in today's cyber-culture
- Current trends in workplace harassment and discrimination: transgender, racial, age and gender claims, and beyond
- Continued guidance on the Amended Americans With Disabilities Act: the definition of a disability, what constitutes a "reasonable accommodation" and how to minimize your exposure to disability discrimination claims
- Retaliation and whistleblowing: how employers can prevent this increasingly prevalent threat, and responding to the latest claims
- Wage & Hour and EPLI: assessing how the market has responded to coverage needs and best practices for mitigating exposure to claims
- Risk management and avoidance: everything insureds, counsel, and insurers now need to know, with a deep dive into early case assessment and resolution
- The triangular relationship between carriers, insureds, and defense counsel: ensuring ethical conduct in the management, litigation, and settlement of EPL claims
- Negotiation, mediation and arbitration of EPL claims: strategies and techniques for engaging in successful ADR

The only EPLI conference that goes the extra mile and brings you government priorities. Hear from:



Constance S. Barker
Commissioner
U.S. EEOC



Elizabeth Grossman
Regional Attorney
New York District Office, U.S. EEOC



James G. Paulsen
Regional Director
NLRB, Region 29

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Be a part of the nation's leading EPLI forum, in its 20th installment!

Last January's conference was the largest in a decade! Don't miss the opportunity to attend the next installment. Speakers from across the nation will come together to ensure that you are prepared to manage and defend against the increasing number of claims being filed, positioned to take advantage of new opportunities in the EPLI market, equipped to minimize exposure to risk, armed to tackle the rising costs of litigation, and primed for aggressive new NLRB and EEOC initiatives and enforcement plans.

It is more important than ever that claims professionals, underwriters, risk managers, in-house counsel, brokers and outside counsel thoroughly understand the EPLI market, claims trends, how to minimize exposure to risk, and the most effective ways to reduce the costs of defending against and settling EPL claims. Retaliation, discrimination and other types of employment cases are crowding court dockets across the country, and with new sources of claims emerging, the influx of cases is on the rise. **Failure to stay ahead of the curve could lead to catastrophic losses including multi-million dollar verdicts and settlement amounts.**

That is why you cannot afford to miss **American Conference Institute's 20th National Employment Practices Liability Insurance** conference. For more than a decade, this conference has been attracting leaders from both the insurance and employment law communities. This installment has been revamped and updated to include enhanced industry perspectives, and to account for new developments, strategies and industry trends. Hear cutting-edge discussions from our exceptional faculty, with industry leaders from: *ABA Insurance Services, ACE USA Professional Risk, ACCOR-ABLNA, AIG, Allied World National Assurance Company, Aon, Axis Capital, Beazeley, Boehringer Ingelheim Pharmaceuticals, Canam Steel Corporation, Chubb, CNA U.S. Specialty Lines, ConvaTec, Euclid Specialty Managers, Freedom Specialty Insurance, The Hartford, Kaplan, Inc., Markel, Marsh, Mitsui Sumitomo Marine Management (USA), OneBeacon Professional Insurance, Rent-A-Center, Inc., Travelers, U.S. Risk Brokers, Wells Fargo Insurance Services, Willis, and many others.*

PLUS, enhance your experience at the conference by also attending the primer:

Fundamentals of the EPLI Market: A Boot Camp for Underwriters, Claims Counsel, Brokers, and Corporate and Private Practice Employment Attorneys

You do not want to miss this unparalleled opportunity to network with industry leaders while obtaining the information that you need to achieve success in the evolving EPLI marketplace. This must-attend event will fill up quickly, so register now by calling **1-888-224-2480**, faxing your registration form to **1-877-927-1563**, or registering online at www.AmericanConference.com/EPLI.

Who You Will Meet

In-House EPL Professionals, including:

- Underwriters
- Claims Counsel
- Employment Counsel
- Brokers
- Product Managers
- Risk Managers
- Human Resource Managers

Private Practice Attorneys Specializing in:

- Labor and Employment
- Insurance
- Employment Discrimination
- Class Actions

Continuing Legal Education Credits



Accreditation will be sought in those jurisdictions requested by the registrants who have continuing education requirements. This course is identified as nontransitional for the purposes of CLE accreditation.

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ACI has a dedicated team which processes requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.

Day One: Monday, January 27, 2014

7:00 **Main Conference Registration**

8:00 **Co-Chairs' Opening Remarks**



Mercedes Colwin
Managing Partner, New York Offices
Gordon & Rees, LLP



Patrick H. Hicks
Shareholder
Littler Mendelson P.C.

8:15 **The Evolution of EPLI Policies: Views from the Brokers, Carriers and In-House Labor and Employment Counsel on Claims Trends, Minimizing Claims, Controlling Costs and the Current Pulse of the EPLI Marketplace**

Brokers/Carriers Part I 8:15

Thomas P. Hams
Managing Director
National EPLI Practice Leader
Aon Financial Services Group

Raymond Cashman
Senior Claims Manager
Freedom Specialty, a Nationwide Company

Ann M. Longmore
Executive Vice President and
Product Leader, Executive Risks Practice
Willis

Laura M. Simmons
EPLI Claims Manager
ABA Insurance Services

Brian Weiss
Vice President
FINEX North America

Joanne Lloyd-Bragg
VP Claims
Axis Capital

Miles R. Afsharnik
Senior Vice President, Claim and Legal
Resource Director, Professional Risk Group
Wells Fargo Insurance Services USA, Inc.

Brokers/Carriers Part II 9:15 (morning break 10:25-10:35)

David T. Vanalek, Esq.
Manager, Claims- Professional Liability
Markel

David Perkins
Executive Vice President
U.S. Risk Brokers, Inc.

Cara Lovering
Vice President, EPLI Portfolio Management
Travelers

Trudy Hardin
Vice President, EPLI Product Manager
Aon

Kenneth Latham
Vice President
EPLI Product Manager
ACE USA Professional Risk

Julie Levinsohn
Senior Claims Consultant
Hartford Financial Products

Daniel Aronowitz
Managing Principal
Euclid Specialty Managers

In-House Labor and Employment Counsel 10:35

Philip I. Weis
Director & Senior Employment Counsel
Boehringer Ingelheim Pharmaceuticals, Inc.

Stephen P. Tasy
Senior Vice President and General Counsel
Mitsui Sumitomo Marine Management
(U.S.A.), Inc.

Michael R. Von Ohlen
Vice President, Legal Affairs
ConvaTec

Christopher E. Paetsch
Vice-President
and Associate General Counsel
Kaplan, Inc.

Ron Peppe
Vice President Legal & Human Resources
Canam Steel Corporation

- Identifying emerging opportunities; identifying and acquiring new business opportunities; working with brokers to acquire new business; looking at new and cutting edge coverage and premiums; status check on rate
- How brokers are representing clients in the current market
- Bringing new products to market: identifying coverage gaps in the market; underwriting concerns; claims considerations
- Trends and potential vulnerabilities: new tactics for managing EPLI
- How a slow economic recovery will impact the EPLI market
- Claims trends: types of claims; industries with the most claims
- Underwriting considerations as they relate to claims trends and market conditions
- How carriers are responding to the increased number of EPL claims being filed
- Foreign claims: insuring US companies with foreign locations; which carriers have these policies and what is being covered?
- What is the market offering now?

- When is coverage needed?
- Avoiding law suits by minimizing claims: Early resolution strategies
- Negotiating settlements with multiple defendants and claims
- Best practices for controlling the cost of the defense of claims: payouts; alternative fee arrangements; implementing internal cost-reduction procedures; reducing the costs associated with the use of defense counsel; considerations when selecting and using defense counsel

Moderator of Panels:



Mercedes Colwin
Managing Partner, New York Offices
Gordon & Rees, LLP

11:50 **Keynote Address: EEOC Initiatives for 2014 and Lessons Learned from 2013**



Constance S. Barker
Commissioner
U.S. Equal Employment Opportunity Commission

The U.S. Equal Employment Opportunity Commission shows no signs of letting up on its aggressive agenda. From the issuance of the EEOC's restrictive criminal background check guidance to the agency's far reaching Strategic Enforcement Plan, employers are left wondering what will be next. Commissioner Barker will share her candid views on the EEOC's recent actions and its future direction. She will also discuss the top compliance issues she believes employers should be aware of in 2014.

12:35 **Networking Luncheon for Speakers and Delegates**

1:35 **Adapting to Expanded Regulatory and Enforcement Efforts Relating to Employment Practices: How Companies Should Prepare for and Respond to Supervision in a Multi-Agency Environment**



Elizabeth Grossman
Regional Attorney
New York District Office
U.S. Equal Employment Opportunity Commission



Linda G. Burwell
Founder
Nemeth Burwell, P.C.



Kenneth P. Carlson, Jr.
Partner
Constangy Brooks & Smith, LLP

- Responding to the recent aggression of the EEOC and other agencies
 - Assessing the trend towards more detailed investigations, fact-finding conferences, and mediations – and their impact on defending charges
 - New obligations to the “long term unemployed”
 - Defending against statistical charges
 - EEOC guidelines on criminal background checks
 - Update on systemic discrimination initiative
- Preparing for increased coordination amongst EEOC offices around the nation
- NLRB initiatives effecting employers with EPL coverage
- Department of Labor initiatives effecting employers with EPL coverage
- Guiding claims through the EEOC, NLRB and state agencies

2:40 **2013's Pivotal Supreme Court Decisions and Legislation Affecting the EPLI Realm**



Gerald L. Maatman
Partner
Seyfarth Shaw



Michael W. Hawkins
Partner
Dinsmore & Shohl LLP



Ricki Roer
Partner
Wilson Elser

Stephen H. Kahn
Founding Partner
Kahn Opton, LLP

- Rulings from the Supreme Court affecting EPLI claims
- State legislation affecting EPLI claims
- The “trickle down effect” of what's going on in Washington
- How to stay ahead of the curve

3:45 **Afternoon Break**

3:55 **The Impact of Social Media in the Workplace: Benchmarking Best Practices and Policies in Today's Cyber-Culture**



James G. Paulsen
Regional Director
National Labor Relations Board



Laura Lapidus
EPL Risk Control Consulting Director
CNA Insurance

Edward McNally
National EPL Practice Leader
Commercial and Financial Institutions
CNA U.S. Specialty Lines



Jeffrey D. Patton
Member in Charge of Winston-Salem Office
Spilman Thomas & Battle, PLLC

- EEOC policies regarding social media
- NLRB recent guidance on social media
- How social media impacts the workplace from a wage and hour perspective
- Corporate policies on the use of social media
- How is social media affecting the hiring process
 - Limitations on the use of background checks
- Lessons learned from use of social media in the workplace
- Pitfalls to avoid when using social media to screen potential and current employees
 - Minimizing exposure to potential privacy and discrimination claims
 - Best practices regarding accessing information that would otherwise not be readily available to an employer
- Using social media as evidence
- Determining whether and when to use information obtained from social media sources to make employment decisions
- Assessing the potential for employer liability arising from employee use of social media, both on and off of corporate time
- Implementing policies and procedures to prevent employee misuse of social media
 - Responding to employee misconduct
- Privacy concerns that can arise from employer and employee use of social media
 - Recent social media privacy legislation: CA, MI, IL, DE, NJ and MD
- Managing and defending against claims arising from the use of social media

- EPLI coverage as it relates to the use of social media by employers and employees

5:05 **Cocktail Reception Sponsored By:**  **Littler**
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Day Two – Tuesday, January 28, 2014

7:00 **Continental Breakfast**

8:00 **Co-Chairs' Remarks**

8:05 **Current Trends in Workplace Harassment and Discrimination: Transgender, Racial, Age and Gender Claims**



Jeffrey Schagren
General Counsel
Accor – ABLNA



Joseph A. Starr
Partner
Starr, Butler, Alexopoulos & Stoner, PLLC



Elizabeth A. Roussel
Partner
Adams and Reese LLP

- New sources of claims
 - Transgender discrimination and harassment
 - EEOC and other agency decisions related to transgender claims
- Other sources of harassment and discrimination claims: race, age and gender
- Effective procedures for reducing exposure to these types of claims
- Lessons learned from pivotal decisions
- Sexual harassment outside the corporate environment-restaurant employers

9:15 **Continued Guidance on the Amended Americans With Disabilities Act: The Definition of a Disability, What Constitutes a “Reasonable Accommodation” and How to Minimize Exposure to Disability Discrimination Claims**



Mary L. Harokopus
Senior Counsel – Labor and Employment
Rent-A-Center, Inc.

Richard L. Steer
Partner
Tarter Krinsky & Drogin LLP



Brian McMillan
Shareholder
Littler Mendelson, P.C.

- Understanding the assumption in favor of a disability
 - How far will the definition reach
 - EEOC's recent initiatives on the definition of a disability
- Overcoming ongoing hurdles relating to the ADA amendments

- How this is playing out in the courts
- Are plaintiffs having more success surviving summary judgment?
- The EEOC's continued efforts on ADA litigation
- Reasonable accommodation and the Interactive Process
 - Determining whether or not an employee has a disability and the duty to provide reasonable accommodation
 - EEOC's expanding view of a reasonable accommodation
 - Hurdles in accommodating mental disabilities
- Third party facility claims being made against restaurants/hotels under the new amendments

10:25 **Morning Coffee Break**

10:35 **Retaliation and Whistleblowing: How Employers Can Prevent This Increasingly Prevalent Threat, and Responding to the Latest Claims**

John W. Hamlin, Esq.
Chief Employment Counsel
Marsh & McLennan Companies, Inc.



David Long-Daniels
Shareholder, Chair of the Atlanta Labor and Employment Practice
Greenberg Traurig LLP



Theresa Smith Lloyd
Partner
Plunkett Cooney, P.C.

- Implementing risk management techniques, including:
 - developing and implementing an effective anti-retaliation policy
 - monitoring supervisors for adverse actions following an employee complaint
 - implementing a reporting process for unlawful retaliation
 - resolving employee complaints fairly and confidentially
 - when and how to conduct an internal investigation
 - evaluating adverse employment decisions before they are implemented
- Supreme Court's expansion of who can be subject to retaliation: third party retaliation or 'cat's paw theory'
- Effect of *University of Texas Southwestern Medical Center v. Nassar*
- Overcoming jury sympathy for employees and bias towards employers in retaliation cases
- Preventing and minimizing punitive damages in retaliation cases
- Interpreting "adverse action": how broad is it?
- Distinguishing between legitimate claims and disgruntled employees
- Underwriting coverage in light of recent case law developments
- Insurability of punitive damages in retaliation claims
- FMLA and retaliation claims
- Countering the usage of discrimination and whistleblower claims as precursors to retaliation claims
 - SOX-related claims
- Preventing retaliation claims on the basis of an invalid discrimination claim
- Improving the likelihood of succeeding at summary judgment

11:45 **Wage & Hour and EPLI: Assessing How the Market Has Responded to Coverage Needs and Best Practices for Mitigating Exposure to Claims**



Paul J. Siegel
Partner
Jackson Lewis LLP



Paul Lukas
Partner
Nichols Kaster, PLLP



Julianna Ryan
Partner
Kaufman Borgeest & Ryan LLP



Michael J. Puma
Partner
Morgan Lewis & Bockius LLP

- Evaluating industry trends relating to wage and hour coverage
- Determining whether to offer wage and hour coverage
 - Is the market hardening?
 - Competitive considerations
 - Public policy
- Which carriers are beginning to dip their toes in the water?
- What types of employers will have coverage?
- Underwriting considerations when offering wage and hour coverage
 - Scope of coverage
 - * Defense-only sublimits
 - * Indemnity coverage
 - * Coverage limits
 - * Claim types: overtime, misclassification, exempt status
 - Factors to consider
 - * Insured's policies and procedures
 - * Employee composition
 - * Industry-specific considerations
- Assessing the costs and benefits of available wage and hour coverage
- Understanding ERISA claims as they relate to wage and hour claims
- Impact on EPLI of overlap between wage and hour claims and other EPL claims
- Reducing exposure to wage and hour claims
 - Instituting effective policies and procedures
 - Obtaining review by outside counsel
- EPLI issues that can arise involving independent contractors or joint employment

12:55 **Networking Luncheon for Speakers and Delegates**

1:55 **Risk Management and Avoidance: Everything Insureds, Counsel, and Insurers Now Need to Know, With a Deep Dive Into Early Case Assessment and Resolution**

Deanna M. Beacham, Esq.
Assistant Vice President
Chubb Group of Insurance Companies

Lauren Levy
U.S. Claims Officer, Employment Practices Liability
Financial Lines Claims
AIG



Patrick Hicks
Shareholder
Littler Mendelson, P.C.



Dina M. Gold
Senior Attorney
Drinker Biddle & Reath LLP

- Best Practices for efficiently resolving and setting EPLI claims
- Evaluating an EPL case for settlement consideration
 - Carrier perspective
 - Defense counsel perspective
 - Plaintiffs' counsel perspective
 - Determining which cases have the greatest potential for large damages awards
- Routine audits of workplace policies for risk management and avoidance

3:05 **Afternoon Break**

3:15 **The Triangular Relationship of Carriers, Insureds, and Defense Counsel: Ensuring Ethical Conduct in the Management, Litigation, and Settlement of EPL Claims**



Ed Berrios, Esq.
Assistant Vice President
Chubb Group of Insurance Companies

Kim P. Bush
Senior Claims Analyst
Allied World National Assurance Company



Sharon L. Gold
Partner
Wyatt, Tarrant & Combs, LLP

- How this relationship plays out and issues to watch out for
- Tips for getting on insurers' panel of defense counsel
- Cost effective ways to work together
- Balancing representation of handling a case and coverage limits with how much money is spent on the defense
- Ethical issues that can arise when an employee treats the company's attorneys as his or her own attorneys
 - Ensuring that employees understand your obligations to the company
- Communication with plaintiffs and company employees – what's appropriate and what's not?
- Ethical considerations for corporate counsel, defense counsel, and carrier claims counsel relating to the defense and settlement of covered claims
 - Potential conflicts of interest
 - Resolving contentious issues
- Coordinating the defense with the insured and the carrier
- Gaining a deeper understanding of the motives and interests of both insureds and carriers when they are faced with an EPL claim
- Carrier perspectives on working with insureds to better manage claims
 - Best practices for giving notice of a claim to a carrier

- Ensuring that carriers are notified of claims in a timely manner
- Determining when carrier consent is required and whether such consent has been given
- Determining if and when a carrier should be notified of a potential claim
- Carrier expectations as they relate to the defense of a claim and the role of in-house and outside counsel
- Carrier perspective on settlement of claims and how it may differ from the insured's perspective
- How carriers, insureds, and defense counsel can best work together to manage and defend against class actions

4:15 **Negotiation, Mediation and Arbitration of EPL Claims: Strategies and Techniques for Engaging in Successful Alternative Dispute Resolutions**

Kerry Evensen, Esq.
Vice President, Claims
One Beacon Professional Insurance

Jeffrey Koonankeil
Claims Manager
Beazley

Jonathan Kurens
Senior Vice President & Executive Director
Aon Risk Solutions



Joseph H. Yastrow
President and Shareholder
Laner Muchin



Jeffrey S. Ranen
Partner
Lewis Brisbois Bisgaard & Smith LLP

- Trends toward arbitration: is coverage providing for arbitration as opposed to litigation?
- Settling collective and class actions
- Evaluating recent successes and failures in the use of ADR to resolve EPL claims
 - What has worked, what has not worked, and why?
- Key break points during litigation at which to consider mediation
- Persuading employees, employers, and carriers to attempt mediation
- Assessing the costs of litigation
 - Establishing reserves
 - What are the costs, liabilities and actual damages
 - Conducting a cost/benefit analysis of your risks and your options
- The insured-carrier dynamic:
 - Achieving a result that is satisfactory to both parties
- Assessing the merits of arbitration as a means of resolving a discrimination, harassment or other employment practices claim
- Determining whether to require employees to sign mandatory, binding arbitration agreements and whether such agreements are enforceable
- State-by-state settlement tendencies

5:30 **Conference Ends**

Pre-Conference Primer
Sunday, January 26, 2014
3:00 – 5:00 pm

Fundamentals of the EPLI Market: A Boot Camp for Underwriters, Claims Counsel, Brokers, and Corporate and Private Practice Employment Attorneys

Joanne Lloyd-Bragg
VP Claims
Axis Capital

Additional Speakers TBD

This 360 Boot Camp will provide participants with detailed information on all of the legal and coverage concerns impacting EPL insurance policies. It is imperative for those involved in the claims process to understand what constitutes a claim, what is being covered and what risks the company is exposed to. Whether you are a broker, underwriter, insurer, risk manager or counsel, participants will come away from this session with a firm grasp on the nuts and bolts of the issues associated with EPL insurance, including:

- Understanding the various EPLI policy options and what the market is offering now
 - Claim types
 - Self-insured retentions
 - Attorneys' fees
 - Wage and hour claims
- Where EPLI coverage issues tend to arise
 - Industry analysis
 - Claims trends
- Typical wordings in EPLI policies
- Interpretation of language in EPLI policies
- Litigating and settling EPL claims
 - Panel counsel

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EMPLOYMENT PRACTICES LIABILITY INSURANCE

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Keynote address by:

Commissioner Constance Barker – EEOC

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