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18th Annual 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:

- Assessing and preparing for recent EEOC aggressive efforts and emerging legislation
- Trends in the EPLI marketplace: new sources of claims and how to respond
- Carrier perspectives on working with insureds to better manage claims and responding to the increased number of EPL claims being filed
- Broker viewpoints on representing clients in the current market
- Wage & Hour and EPLI: industry trends relating to coverage and reducing exposure to claims
- In-House labor & employment counsel insights: best practices for controlling costs
- Strategies and techniques for engaging in successful alternative dispute resolutions: the negotiation, mediation, arbitration and settlement of EPL Claims
- The 'Triangular Relationship': How carriers, insureds, and defense counsel can best work together to reduce risk
- The latest on social media and EPLI: how to benchmark your social media policies and procedures
- Managing the influx of retaliation claims: how employers can protect themselves
- Minimizing exposure to disability discrimination claims and effectively evaluating claims if a suit is filed
- EPLI and E-Discovery: how to avoid being consumed by the cost



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



Constance S. Barker  
U.S. EEOC



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

James G. Paulsen  
NLRB, Region 29

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# The nation's leading EPLI forum is back 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 EEOC initiatives

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 **18th Annual Employment Practices Liability Insurance conference**. For the past seventeen years, this conference has attracted a "who's who" of both the insurance and employment law communities. This year's program has been fully revamped and updated to include enhanced industry perspectives, and account for new developments, strategies and industry trends. Hear cutting-edge solutions from our exceptional faculty including: *ACE USA Professional Risk, AIG, Alliant Insurance Services, Allied World National Assurance Company, Aon, Beazley Group, Betterley Risk Consultants, Boehringer Ingelheim Pharmaceuticals, Canam Steel Corporation, Chartis, Chubb, Cisco Systems, CNA U.S. Specialty Lines, Euclid Specialty Managers, Frank Crystal & Company, Freedom Specialty Insurance, Hartford Financial Product, Hiscox, The Home Depot, Markel, Marriott International, Marsh, Mitsui Sumitomo Marine Management (USA), Monitor Liability Managers, Navigators Re, OneBeacon Professional Insurance, Philadelphia Insurance Companies, Solae, SH Smith & Company, Travelers, Wells Fargo Insurance Services, and Willis*

## PLUS, add value to your attendance by also registering for the interactive Workshops:

- A. Fundamentals of the EPLI Market: A Boot Camp for Underwriters, Claims Counsel, Brokers, and Corporate and Private Practice Employment Attorneys
- B. Negotiating and Drafting EPLI Provisions and Policies

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](http://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

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## Day One: Tuesday, January 29, 2013

7:15 Registration and Continental Breakfast

8:00 Co-Chairs' Welcoming Remarks



*Gerald L. Maatman, Jr.*  
Partner  
Seyfarth Shaw LLP



*Patrick H. Hicks*  
Shareholder  
Littler Mendelson P.C.

8:05 **The Evolution of EPLI Policies: View 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**  
8:05

*Edward T. McNally II, Esq.*  
National EPL Practice Leader  
CNA U.S. Specialty Lines

*Kenneth Latham*  
Vice President  
EPL Product Manager  
ACE USA Professional Risk

*Erin M. Ringbloom, Esq.*  
Senior Claims Analyst  
Allied World National Assurance Company

*Joni Mason*  
Senior Vice President  
EPL Product Manager  
Chartis

*Janet B. Dreifuss, Esq.*  
Senior Vice President, Executive Risk  
Alliant Insurance Services

*Alyssa Noble Pianelli*  
Specialty Lines Claims  
Beazley Group

*Julie Levinsohn*  
Senior Claims Consultant  
Hartford Financial Product

- 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 rates
  - 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 polices and what is being covered
  - What is the market offering now?

**Brokers/Carriers Part II**  
9:10

*Ann M. Longmore*  
Executive Vice President and Product Leader,  
FINEX North America  
Willis

*Adeola I. Adele*  
Senior Vice President, National EPLI Product Leader  
Marsh Inc.

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

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

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

*Cara Lovering*  
Vice President, EPL Portfolio Management  
Travelers

*William C. Redington*  
Senior Vice President  
Navigators Re

**In-House Labor and Employment Counsel**  
10:15

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

*Wanda M. Morris*  
Senior Counsel, Employment & Labor Law  
The Home Depot

*Roxane Marenberg*  
Sr. Director, Employment Law  
Cisco Systems, Inc.

*Sandra Doreson*  
Corporate Counsel  
Solae, LLC

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

*Lisa Fentress, Esq.*  
Director of Specialty Claims  
Marriott International Inc.

- When is coverage needed?
- Avoiding lawsuits 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
- How in-house manage the business's expectations with respect to lawsuits and exposure
- How in-house manage executive witnesses
- Where outside counsel succeeds and where they fall short

Moderator of Panels:



*Richard S. Betterley*  
President and CEO  
Betterley Risk Consultants

11:10 Morning Coffee Break

11:20 **Keynote Address: EEOC Initiatives for 2013 and Beyond**



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

- Lessons learned and types of claims from 2012
- Market response to pressure from the EEOC
- EEOC regulations and initiatives for 2013
- Understanding the EEOC investigation process
- EEOC perspectives on the settlement of claims
- Emerging trends and developments at the EEOC
- Litigation and enforcement priorities for 2013 and beyond
- Pending cases to watch for in 2013
- Defending your case before the EEOC: Common mistakes and how to avoid them

12:00 **Preparing for Expanded Regulatory, Legislative and Enforcement Efforts in the EPLI Realm**



*Elizabeth Grossman*  
Regional Attorney  
New York District Office  
U.S. Equal Employment Opportunity Commission (EEOC)



*Benton J. Mathis, Jr.*  
Partner  
Freeman Mathis & Gary, LLP



*Gerald L. Maatman*  
Partner  
Seyfarth Shaw LLP



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

*Stephen H. Kahn*  
Founding Partner  
Kahn Opton, LLP

- Responding to recent aggressive efforts by 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
- Preparing for increased coordination amongst EEOC offices around the nation
- *Dukes v. Wal-Mart*: Big changes in the class action arena
  - How has this decision affected class action suits?
  - Is this creating “mass actions”?
- The effect of the affordable healthcare act on EPLI

1:15 **Networking Luncheon for Speakers and Delegates**

2:15 **With Technology Moving at a Faster Pace than Courts Can Keep Up With, Factoring in the Latest Social Media Best Practices in the Wage & Hour, Hiring, and Adverse Decision Contexts**

*James G. Paulsen*  
Regional Director  
National Labor Relations Board, Region 29



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

*Ron Peppe*  
Vice President Legal & Human Resources  
Canam Steel Corporation

*Thomas Herendeen*  
Vice President, Management & Professional Liability  
Philadelphia Insurance Companies

Moderator:



*Mercedes Colwin*  
Managing Partner, New York offices  
Gordon & Rees, LLP

- EEOC policies regarding social media
- NLRB recent guidance on employee use of social media and employer policies on its misuse
- 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
- 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
- Monitoring/using data created by company employees on company devices outside of work/work hours

3:30 **Afternoon Break**

3:40 **The Evolution of Wage & Hour and EPLI: Offering and Obtaining Coverage for and Reducing Exposure to Wage & Hour Claims**



*Michael Santocki*  
Director  
Frank Crystal & Company



*Daniel Aronowitz*  
Managing Principal  
Euclid Specialty Managers



*Paul Lukas*  
Partner  
Nichols Kaster, PLLP





*Julianna Ryan*  
Partner  
Kaufman Borgeest & Ryan LLP



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



*Paul J. Siegel*  
Partner  
Jackson Lewis 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
- 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

4:55 **E-Discovery and EPLI: How to Avoid Being Consumed by the Cost**



*Daniel Kulakofsky*  
Managing Counsel  
Director of Electronic Discovery  
The Travelers Companies, Inc.



*Daniel L. Regard, J.D., M.B.A.*  
Managing Director  
iDiscovery Solutions, Inc.

*Dave Maheffey*  
Divisional Vice President  
Financial Lines – Litigation Management  
AIG

Moderator



*Paul D. Weiner*  
Shareholder  
National E-Discovery Counsel  
Littler Mendelson P.C.

- Baseline e-Discovery obligations in today's digital world
- Anticipating and preparing for emerging complexities in e-Discovery, including recent case-law developments and trends, as well as emerging technologies

- Practical strategies for mitigating risks and expenses, including via the use of: e-Discovery counsel; e-Discovery business units; preferred/approved experts or vendors; e-Discovery readiness initiatives
- Overcoming the uneven playing field created by the perception that employers often have most or all of the relevant documents and ESI

5:55 **Conference Adjourns**

Cocktail Reception Hosted by:



**Day Two – Wednesday, January 30, 2013**

7:30 **Continental Breakfast**

8:00 **The New Era of Retaliation and Whistleblowing Claims: What this Means for Employers and How They Can Protect Themselves**



*Christopher McNulty*  
Senior Claims Counsel  
Head of Claims for the Management Liability Division  
Hiscox USA



*Robert J. Sniffen*  
Managing Partner  
Sniffen & Spellman, P.A.



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



*Ilene W. Berman*  
Partner and Chair, Employment,  
Labor & Immigration Group  
Taylor English Duma LLP

- Supreme Court's expansion of who can be subject to retaliation: third party retaliation or 'cat's paw theory'
- Overcoming jury sympathy for employees and bias towards employers in retaliation cases
- The world of retaliation claims post-*Burlington Northern*
- Preventing and minimizing punitive damages in retaliation cases
- Interpreting "adverse action": How broad is it?
- Critical issues regarding timing of the adverse action
- Documentation of your actions - keys to preventing or dealing with a retaliation claim
- Impact of employee performance reviews on a retaliation claim
- 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
- 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

9:05 **The Aftermath of the ADA Amendment Act: Minimizing Exposure to Disability Discrimination Claims and Effectively Assessing Claims if a Suit is Filed**



*Melissa Siggia, Esq.*  
Claims Manager  
Beazley Group



*Theresa Smith Lloyd*  
Partner, Chair of Labor & Employment Group  
Plunkett Cooney, P.C.



*Ricki Roer*  
Partner, Chair of the National Labor and Practice Team  
Wilson Elser



*Eric B. Meyer*  
Partner, Labor and Employment Group  
Dilworth Paxon LLP



*Christopher A. Tinari*  
Partner, Chair of Labor and Employment Group  
Margolis Edelstein

- Understanding the new assumption in favor of a disability
  - o How far will the definition reach
  - o EEOC's recent initiatives on the definition of a disability
- Overcoming ongoing hurdles relating to the ADA amendments
  - o How this is playing out in the courts
  - o Are plaintiffs having more success surviving summary judgment?
- The EEOC's continued aggressions on ADA litigation
- Reasonable accommodation and the Interactive Process
  - o Determining whether or not an employee has a disability and the duty to provide reasonable accommodation
- Third party facility claims being made against restaurants/hotels, etc. under the new amendments

10:15 **Morning Coffee Break**

10:25 **The Tripartite Relationship of Carriers, Insureds, and Defense Counsel: The Ethical Balancing of Interests in the Litigation and Settlement of EPL Claims**



*Jason A. Fogg, Esq.*  
Vice President, Claims & Regulatory Compliance  
Monitor Liability Managers, LLC



*Patrick Hicks*  
Shareholder  
Littler Mendelson P.C.



*Joseph H. Yastrow*  
Partner  
Laner Muchin



*Raymond Cashman*  
Senior Claims Manager  
Freedom Specialty, a Nationwide Company

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

*Ed Berrios, Esq.*  
Assistant Vice President  
Chubb & Son

Moderator:



*Dennis D. Strazulo*  
Partner  
Strazulo Fitzgerald LLP

- What is the tripartite relationship and what issues arise from it?
- Ethical issues of joint representation of employer and employee
  - Ensuring that employees understand what joint representation means and does not mean
  - When should separate counsel be assigned for an employee?
- Communication with plaintiffs and company employees - what's appropriate and what's not?
- Managing tripartite conflicts 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
  - Demands to settle within the policy's limits
- Coordinating the defense with the insured and the carrier
  - Effective ways to work together
- 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
  - Expectations as 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
- Managing the limits of a wasting policy
- How carriers, insureds, and defense counsel can best work together to manage and defend against class actions

11:50 **Negotiation, Mediation, Arbitration, and Settlement of EPL Claims: Strategies and Techniques for Engaging in Successful Alternative Dispute Resolutions**



*Lisa Fentress, Esq.*  
Director of Specialty Claims  
Marriott International Inc.



*Gary Rattet*  
Partner  
Lewis Brisbois Bisgaard & Smith LLP

ETHICS



*Dina M. Gold*  
Senior Attorney  
Drinker Biddle & Reath LLP



*Kenneth Carlson*  
Partner  
Constangy Brooks & Smith LLP

*Deanna M. Beacham, Esq.*  
Assistant Vice President  
Chubb & Son

*Kerry Evensen*  
Vice President-Claims  
OneBeacon Professional Insurance

- Evaluating an EPL case for settlement consideration
- Assessing the costs of litigation
- Determining which cases have the greatest potential for large damages awards
- What are the costs, liabilities and actual damages
- Conducting a cost/benefit analysis of your risks and your options
- Establishing reserves
- Key break points during litigation at which to consider mediation

- Persuading employees, employers, and carriers to attempt mediation
- The insured-carrier dynamic
- Achieving a result that is satisfactory to both parties
- Evaluating recent successes and failures in the use of ADR to resolve EPL claims
- What has worked, what has not worked, and why?
- Settling collective and class actions
- Trends toward arbitration: is coverage providing for arbitration as opposed to litigation?
- 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 ADR and settlement tendencies
- Settlement with the EEOC: whether to accept the EEOC's invitation to mediate, settlement during the conciliation process and/or settlement when the EEOC is the plaintiff

1:05

### Conference Ends – Lunch for Workshop B Participants

## A Pre-Conference Workshop Monday, January 28, 2013 2:15 - 4:15 pm

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



*Paul J. Siegel*  
Partner  
Jackson Lewis LLP

*Additional speaker(s) TBA*

This primer 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

## B Post-Conference Drafting Workshop Wednesday, January 30, 2013 2:15 - 4:15 pm

### Negotiating and Drafting EPLI Provisions and Policies

*Thomas P. Hams*

Managing Director, National EPLI Practice Leader  
Aon Financial Services Group

*Additional speaker(s) TBA*

Designed to address your needs and the needs of your client, this session will provide the opportunity to put all the main conference information together in a practical exercise, as the speakers walk you through the ins and outs of negotiating, drafting and managing EPLI claims. The session will allow you to identify problematic areas, map out coverage issues and get your questions answered.

Topics will include:

- Properly choosing a carrier
- What policies are best for your company
- Understanding the different policies and the remedies of each
- How are negotiations changing due to increased litigation
- Detecting – and clarifying uncertainties in the contract language
- Defining terms: which are most problematic
- Key clauses and considerations
- Significant exclusions – and how to word them
- Using clear language that addresses unusual or high risk situations and avoiding ambiguity

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# 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

Keynote address by:  
**Commissioner Constance Barker – EEOC**

Featuring an exceptional faculty, with industry experts from:  
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