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The Betterley Report

EMPLOYMENT PRACTICES LIABILITY INSURANCE MARKET SURVEY 2013:

Rates and Deductibles Up as Carriers Cope with Losses

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Highlights of This Issue

- Carriers Report Ongoing Rate Increases that Exceed Most Specialty Lines
- Mandated Increases in Deductibles
- Even Worse in California
- Coverage Improvements? Not in this Environment
- We Interview Mike Naclerio of Enquiron about Risk Management Services
- MarketStance Reports on Growth Opportunities

Next Issue
February 2014
Technology E&O Market Survey

Editor's Note: *In this issue of The Betterley Report, we present our annual review and evaluation of the changing Employment Practices Liability market. We identified the leading carriers and key differences in their offerings, as well as evaluated the state of the market – how healthy is the line, whether it is growing, and what is the claims experience. In particular, we focused on rate and retention trends.*

This issue reviews thirty-five carrier products that form the core of this market, having added HSB (more on this later). Navigators was removed from the survey because they did not respond to our attempts to update their information. Lexington has traditionally been shown as a separate entry; we have now consolidated it within the AIG listing. Finally, Alterra was acquired by Markel and is now listed as Markel Bermuda.

EPLI coverage can also be found in Management Liability insurance packages. Readers may wish to read our Private Company Management Liability Market Survey (August 2013), which reviews so-called "Management Liability" products that can, and usually do, include EPLI.

Longtime readers of EPLI Market Survey know the importance of the value-added Risk Management Services that accompany most policies. For these services to reduce the frequency and severity of claims, they must be <u>*used*</u> *by the insureds and* <u>*effective*</u> *in their application. We interviewed Mike Naclerio, Enquiron's President, about their reasoning and techniques beginning on page 16*

Finally, we have added commentary on the size and growth prospects of EPLI by insurance demographics and economic experts MarketStance.

While each insurance carrier was contacted in order to obtain this information, we have tested their responses against our own experience and knowledge. Where they conflict, we have reviewed the inconsistencies with the carriers. However, the evaluation and conclusions are our own.

Rather than reproduce their exact policy wording (which can be voluminous), in many cases we have paraphrased their wording, in the interest of space and simplicity. Of course, the insurance policies govern the coverage provided, and the carriers are not responsible for our interpretation of their policies or survey responses.

In the use of this material, the reader should understand that the information applies to the standard products of the carriers, and that special arrangements of coverage, cost, and other variables may be available on a negotiated basis. Professional counsel should be sought before any action or decision is made in the use of this information.

List of Tables

Introduction

We have been closely following the EPLI market since 1991. In the beginning, there were 5 carriers; now, there are perhaps 50-55 carriers active in the standalone market. While there are other carriers offering standalone EPLI, they represent (we believe) a trivial portion of the market. In addition to the standalone products, add-on coverage to package products appears to be limited to smaller employers, as carriers recognize the importance of underwriting and claims expertise as vital to EPLI success.

HSB (Hartford Steam Boiler) has for years offered a private-label EPLI product through selected insurers. These insurers utilize the policy form, loss costs, underwriting and claims guidelines, and Risk Management services of HSB. Although an insured and its broker would not see the HSB name on the product, it is actually their product.

For some time we have thought to include their product in our survey as it is an important part of the market for employers with fewer than 50 employees; you will find it under the HSB name in our tables.

For our survey, we focus on the most prominent carriers writing the most business, or those that offer some unique product or service. While this omits some carriers, we believe that it makes the information more useful to our readers.

To test whether we were covering the key carriers, we have reviewed the list with some of the most prominent observers of the EPLI market, who have confirmed we did not omit any significant carriers.

Some notes on the tables: in the Exclusions tables, the entry "no" means that the exclusion is not present in the policy. Of course, if coverage is not present (because it is not included in a definition or insuring agreement), then the absence of an exclusion does not necessarily mean coverage exists.

New and Interesting

This year's story is all about claims experience and rate inadequacy leading to rate and deductible or self-insured retention increases and increased attention to underwriting. Carriers are fighting to achieve higher rates in a market that is willing to accept a bit of rate if necessary but that is quick to seek other proposals when those rates or deductible increases seem high. This is especially true of insureds that haven't experienced claims.

Improved implementation and execution of value-added Risk Management services has become important for some carriers. We see increas-

Carriers in This Survey

The full report includes a list of 31 markets for this coverage, along with underwriter contact information, and gives you a detailed analysis of distinctive features of each carrier's offerings. Learn more about *The Betterley Report*, and subscribe on IRMI.com.

ing interest in going beyond just offering services as a selling feature. Instead, these services are being used to drive down claims and their costs. That is a welcome trend and one that we hope insurers, insureds, and brokers will encourage.

Product innovation in terms of broader coverage and/or services is limited. For now, it's all about rate adequacy and sharing more of the risk *via* higher deductibles.

State of the Market

Rates and Retentions

Although these increases are not dramatic, compared with the long soft market and the relatively low increases in other commercial lines, they do represent an acceleration in the increase in rates and deductibles required. 2013 has been a period of EPLI rate and deductible increases after experiencing a deterioration in loss experience. This trend is expected to continue into 2014, perhaps longer. California has been particularly hard hit with losses and is yet again a state that can find reasonably-priced EPLI hard to obtain.

Many insureds and brokers have moved their business to other carriers in an effort to counter the increased rates and/or deductibles. While understandable, an insured is probably not well served by frequent switching of carriers. His is especially true for claims made forms of insurance, but we think applies to all forms. Unfortunately, when carriers discount their rates to attract conquest insureds (that is, those moving from another carrier), the incentive to switch can be compelling.

At the end of 2012 we noted a distinct trend to higher rates and some increase in retentions (deductibles and SIRs). At that time, the forecast was for across-the-board rate increases on almost all insureds and by all carriers. Higher increases might be expected in certain states and for certain business classes, and for individual carriers restoring profitability to their books. There was little expectation of flat rates and even less of reductions.

Our survey of carriers revealed a much more diverse situation – the majority indicated further rate increases, but there were several that planned level and even decreasing rates. Very surprising, contrary to what agents and brokers were seeing, and not a good sign for the health of this line.

It looks like that variable attitude toward rates didn't take hold in 2013; instead, carriers pushed through rate (and deductible) increases that were more aggressive than in most other lines, but that were also indicated by lack of profits.

In fact, some carriers pushed through even more aggressive rate increases as they needed to catch up for previous rates that were especially low. Here are some of the (not for attribution) carrier comments. It is an indication of current attitudes toward pricing.

From a large carrier focused on all sizes of insureds:

- Market in general - rates up 10%
- Own rates – up 9%

From a mid-sized carrier focused on small-mid-sized insureds:

- Market in general - rates up 15%
- Own rates – up 15%

From a small carrier focused on small insureds:

- Market in general - rates up 15%
- Own rates – up 25%

From a large carrier focused on all sizes of insureds:

- Market in general - rates up 5%
- Own rates –flat to plus 9%

From a mid-sized carrier focused on smaller insureds:

- Market in general - rates up 15-25%
- Own rates –flat to plus 40% (in CA)

From another mid-sized carrier focused on smaller insureds:

- Market in general - rates up 15%
- Own rates – up 15%

Retentions (meaning deductibles or self-insured retentions) show somewhat more consistency amongst the commenting carriers. We saw no evidence of declining retentions. The trend was to hold deductibles at the same level or to require the insured to move up to the next level (e.g., from $2,500 to $5,000). Carriers were more insistent about this increase requirement than they were about rate increases.

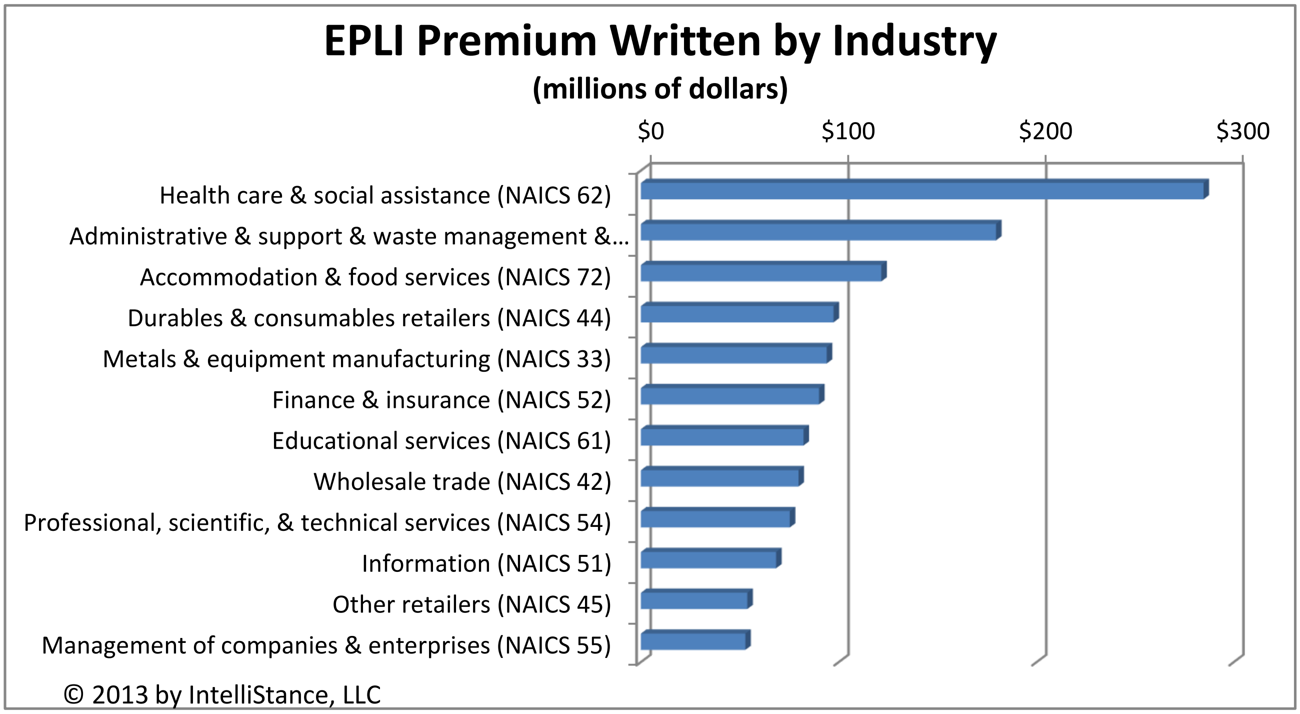
Volume

The volume of business (gross written premium) is inching up from last year's $1.6 billion. Increases are a result of a combination of strengthening rates and increasing exposure bases. There are also some reports of smaller insureds buying their first EPLI policy (or perhaps one that they discontinued during the Great Recession) making a small contribution to premium growth. The U.S. market looks to be about $1.7 billion premium.

For a different perspective on the size of the U.S. EPLI market, we asked Dr. Fritz Yohn, CEO of MarketStance, for his company's observations on the degree of market penetration and opportunities for EPLI.

MarketStance is a nationally-recognized source for market demographic, insurance, and economic information for the Commercial P&C Industry. The company counts nearly 75% of the Top 25 commercial insurers among its client base for market intelligence, analytical services, and integrated solutions combining client data with MarketStance and other 3rd-party sources. For more information on the firm: www.marketstance.com.

Annual EPLI premium for US-based business according to MarketStance was approximately $1.565 million in 2012. No single industry group dominates these purchases but two -- health care and social assistance (NAICS 62) and administration & supporting services (NAICS 56) each account for more than 10% of total premiums (see EPLI Premium Written by Industry chart on the following page).



Employment growth is an important driver of new EPLI premium potential. Over the 2013-17 period, MarketStance forecasts that some of the smaller states such as North Dakota and Utah will experience the most rapid growth in EPLI premium potential (See Exhibit 2). All told, these top 11 states are forecast to add some $46 million in new EPL premium potential.

The fraction of firms with EPLI coverage varies markedly among these states, from a low of under 6% in Idaho and North Dakota to a high of 10% in Georgia. The fraction of each state's employment working in firms with EPLI coverage also varies significantly, reflecting both differences in industrial composition of each state's economy as well as inherent differences in employment practices exposure.

The next table shows the forecasted growth in EPLI premiums.

Forecast Growth in EPLI Premium

	Premium Growth 2013-17		Pct. Currently Covered	
State	Percent	$ millions	Firms	Employees
ND	13.1%	$ 0.5	5.6%	37.0%
TX	12.9%	$ 11.0	8.4%	40.1%
AZ	11.9%	$ 2.6	8.9%	41.8%
CO	11.2%	$ 2.3	6.9%	41.0%
UT	10.7%	$ 1.0	6.9%	41.6%
AK	10.7%	$ 0.2	4.8%	30.9%
GA	10.4%	$ 4.6	10.2%	46.6%
FL	10.4%	$ 8.7	8.0%	48.3%
ID	9.0%	$ 0.4	5.4%	34.3%
CA	8.8%	$ 13.7	8.0%	39.6%
NV	8.8%	$ 0.9	7.8%	47.3%

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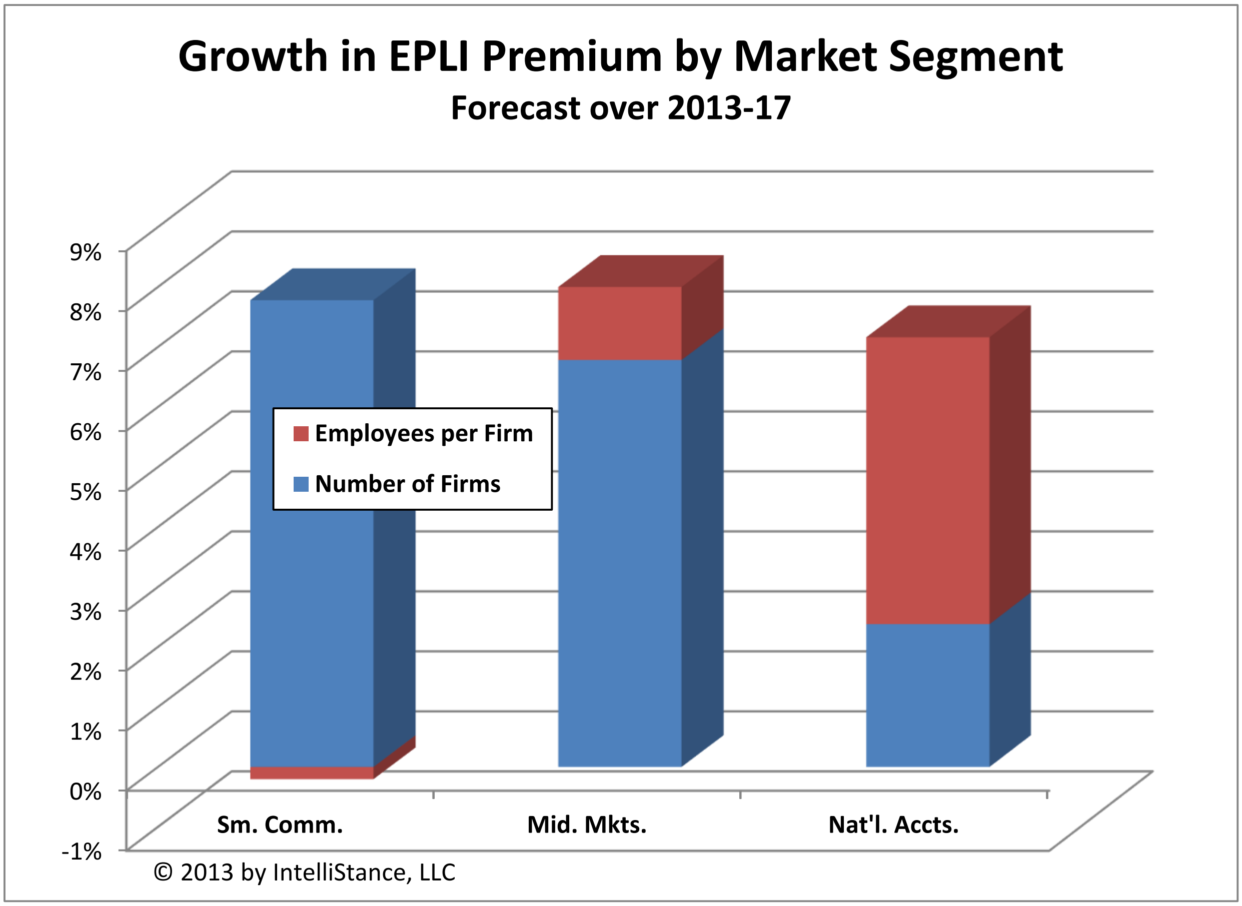
While growth in this line (along with many others) has been slow in recent years due to the recession, healthy future growth will come from new business establishment and positive employment trends (see chart Growth in EPLI Premium



by Market Segment). The composition of this growth changes markedly across the various market segments with essentially all of the EPLI growth in small commercial coming from new accounts and the bulk of the corresponding growth in national accounts associated with deepening exposures per existing account.

Claims

EPLI Market Survey continues to focus on products, not claims, but we keep our ear to the ground on claims as they affect coverage, pricing, and availability.

The frequency of claims continues to be costly for underwriters. Insureds have had more covered claims than expected combined with increasing defense costs. This has increasingly been met by some carriers with mandatory higher deductibles.

There are two problem areas of claims: mass claims and Wage and Hour claims.

Mass (also called multiple plaintiff) claims, where brand name companies are targeted by multiple plaintiffs that threaten coercive action unless the defendant settles quickly, are a big problem for carriers writing large companies. Carriers have seen some very large settlements for claims that employers would not fight, fearing reputational costs more than the costs to settle. These claims have made it difficult for brand-name companies to buy EPLI coverage at the costs they would like.

Carriers that have a lot of experience with these types of claims use a variety of tools.

Some report mandatory deductibles of $1 million+, and coinsurance of 10-25%, for such insureds. Other carriers include policy language that applies the deductible to each claim, rather than a single deductible for the group of claims. The leading carriers are very firm in requiring large retentions for mass claims.

Carriers focusing on smaller- to mid-sized employers have not seen mass claims as a problem (since most of their insureds are not as vulnerable to the pressure of such claims), and generally have not applied any special restrictions. However they are encountering more Wage and Hour claims than expected. These are brought by employees alleging that they were not paid for all of the hours they worked, or that they were not paid the correct wage. This can add up to a very expensive claim, when multiplied by all of the affected employees.

Target Markets

Carriers continue to be interested in most types of insureds, with the significant exceptions of employee leasing and temporary staffing, auto dealers, law firms, casinos, educational and health care institutions, religious, and public entities (which have specialty markets available).

Few carriers avoid specific states, unless they have not yet been approved to write business in a particular state. California is often cited as a challenge (carriers requiring larger deductibles, for example), but it is such a large market, it can't easily be ignored.

Carriers also identify states in which their product may not be available due to regulatory restrictions, but since these can change, it is better to inquire of the carrier before rejecting it as a possible market.

Limits, Deductibles and Coinsurance

Total capacity in the market, using U.S., Bermuda, and London sources, looks to be about $500 million, although there are reports of as much as $800 million. This is achieved by buying excess layers, of course. These layers may not be coming from other EPL insurers, but rather be bundled into super layers that include other coverages (such as Excess Umbrella, E&O, and others).

As noted earlier, deductibles and self-insured retentions are on the rise, which we think is a healthy sign for the line. Deductibles were, in our opinion, often too low and required insurers to pay for relatively frequent and non-catastrophic claims. We think it is better for both the insured and the insurer to avoid

Coinsurance? Insureds can reduce premiums by assuming a percentage of each loss, but we haven't seen that happen in years, and don't expect to in the near future. For very large employers coinsurance might be a good way to share in the loss for appropriate savings (as they sometimes do for mass claims).

In past Reports we have commented that most small- to mid-sized insureds select deductibles that are too small, which can lead to pressure to increase premiums upon renewal. The market is pushing those deductibles higher, which in the long run will be helpful to holding premium rises in check. Still, it is tough on the insureds and their brokers when a market that used to offer a $2,500 deductible pushes the minimum to $10,000, then the next year to $25,000 (which one reader experienced).

Sample Pricing

We asked carriers to price out several sample applicants, using the following assumptions:

- 5,000 employees, $10 million limit, $100,000 deductible
- 500 employees, $5 million limit, $25,000 deductible
- 250 employees, $1 million limit, $25,000 deductible
- 100 employees, $1 million limit, $10,000 deductible
- 50 employees, $1 million limit, $2,500 deductible

We asked them to assume a "typical" insured, "typical" state, and no particular underwriting issues (problems). Prior Acts coverage was to be included.

The results are shown in the Typical Premiums table attached.

Seven carriers provided this information; others expressed reservations about their ability to sample price, since too many factors enter into the pricing equation. While that is a good point, we find that employers and their risk management advisors are hungry for information about price ranges, and offer it here.

Please be cautious in using this information. Although it is a guide to the price competitiveness of a carrier, it is easy to be competitive when quoting a theoretical applicant. Also, individual carriers may be more or less competitive in a particular state or industry. Use the table as a guide to typical pricing, not as a reason to reject a carrier as too expensive.

Typical Limits

As an indication of the maturity of this market, we are more often asked about the typical limits purchased by insureds, and less often about which types of employers buy coverage. Most carriers provided useful information about the typical, high, and lower limits purchased by the insureds.

Since limits often equate to the size of the insured, we specified employers ranging from 50 to 25,000 employees. The results are summarized in the attached table "Typical Limits." The answers are merely an indication of the limits insureds select, and should not be used as a guide to sufficient limits.

To us, this table provides continuing evidence that many employers do not buy enough limits, and seem content to have insurance, even if it is inadequate.

Special Coverages

Several special coverages are becoming more necessary, so we asked for specific information, and included the responses in the table "Special Coverages and Cost."

Punitive Damages Coverage

We asked carriers for information about coverage for punitive-type damages and/or intentional acts in states where there may be a restriction of coverage imposed on the insurer. Our intent was to elicit information about Most Favorable Venue-type wording (also called choice of law) and Offshore Wrap policies.

Coverage for either Punitive Damages or Intentional Acts can be prohibited by states, either by regulation or on a theory that such coverage is contrary to public policy (or both!). Almost every carrier offers separate coverage to fill in such potential gaps in coverage, either via most favorable venue wording, or with an off-shore wraparound in a jurisdiction such as Bermuda that does not frown upon such coverage.

Several carriers are reluctant to disclose that they offer such coverage, fearing that regulators might attack their offshore solutions. We understand that there are 16 states that prohibit or restrict coverage for either Punitive Damages and/or Intentional Acts, including New York, Ohio, Florida, and California. Such additional coverage is vital in those states.

Most carriers have Most Favorable Venue wording, at least as an option, but be cautious about carriers that simply answer "Where Insurable," as the whole point of this coverage feature is to remove the uncertainty.

Wage and Hour Coverage

The biggest concern continues to be coverage for Wage and Hour claims, including Aon's product for larger insureds, which we wrote about in our 2012 Report. Lawsuits alleging improper payment of overtime wages have been very much in the news the past several years. Employees classified as exempt and therefore not owed overtime have been able to bring (sometimes) successful claims that they are in fact owed overtime. Prominent class action lawsuits have created huge legal bills for the targeted employers.

Are Wage and Hour claims covered in a typical EPLI policy? It is not always clear whether or not Wage and Hour claims are covered in a typical EPLI policy, and our participating carriers are reluctant, in many cases, to provide definitive information. Generally, it seems that a Wage and Hour claim that involves other covered allegations will at least get the insured a defense.

Because of this uncertainty, we now ask carriers for definitive information about this coverage (or lack thereof); their responses are in our Special Coverages and Cost table.

Wage and Hour should be insurable for small- to mid-sized employers. We think there are many instances where the violation was unintentional, not caused by an employer trying to deny its employees a just compensation. While we do not believe that insurance should step in to pay for compensation found to be owed to the employees, nor to pay for related governmental fines, multiplied damages and attorney's fees could be covered.

Third-Party Liability

Coverage for suits brought by third parties, such as customers, continues to draw attention. Although early coverage forms applied to discrimination only, more now apply to both discrimination and harassment. All carriers can include third-party coverage in 2013.

Not all coverages are alike; some carriers restrict the coverage to business relationships, which is not unreasonable, and may limit harassment coverage to sexual harassment, which may not be as reasonable.

Workplace Violence

Few carriers offer it, and we don't see much demand for the cover.

Who Is An Insured And Definition Of Claim

As with definitions of coverage, this area has also shown a real convergence of approach, with less coverage distinction between carriers. For example, all carriers cover employees, although some specifically include seasonal or temporary employees in their definition. This raises a question: if a carrier covers employees, without limitation, does it need to specifically include seasonal or temporary employees? We think specific language is preferable.

Leased and contract employees may need coverage; a number of carriers extend coverage to these individuals if they are indemnifiable like employees.

Providing coverage for part-time, seasonal, or temporary employees would seem to be wise. Including the employee defendant in the defense of the claim might help reduce the risk that he or she will attempt to blame the employer in order to get released from the claim.

Newly acquired organizations is one area in which carriers differ, and subsidiaries is another. Generally, we find less distinction between carriers than before.

What is a claim, for the purposes of triggering coverage, is important. Carriers are generally similar in approach, including written demands, administrative processes, and arbitration. Oral demands are covered by some.

Definition of Coverage

The definition of coverage remains vitally important to the quality of the policy, but it is getting increasingly difficult to distinguish between carriers. The key sources of claims are covered well, and it is only by subjecting the policy wording to microscope-level analysis that we can distinguish differences.

Most policies now contain all-inclusive wording that eliminates the need to enumerate perils. Carriers now frequently broaden their coverage by including language such as "and other protected classes." This is a benefit for the insured, and makes the need to compare lists of perils less important.

In general, we would encourage carriers to reduce the number of words and definitions they use, and use more all-inclusive (all risk) wording.

In the definitions of coverage, we are seeing more "all risk" wording, and view this as better for both the carrier and the insured.

In analyzing coverage for this article, we struggle with how best to present our findings. On the one hand, we would like to list the covered items, and then identify whether all-inclusive wording is included (this is the approach used this year). Both carriers and readers seem to like a list of covered items.

On the other hand, if all-inclusive wording is becoming prevalent, then listing items just takes up space.

Claims Reporting and Extended Reporting Period

How soon a claim has to be reported is an important distinction between policy forms. Most carriers require the Named Insured to report "as soon as practicable," which seems reasonable. In practice, unless the insured has delayed reporting so long (and irresponsibly) as to compromise the defense of the claim, there is little practical difference between carriers.

Not all policies are as generous when it comes to claims reported after the expiration of the policy. Some, for example, require the claim to be reported before the expiration, while others have an automatic extended reporting period of up to ninety days.

An important distinction between carriers involves the interpretation of when an event is actually a claim under the policy. Is a comment by an employee that he or she is dissatisfied with their treatment a claim under the policy? Many carriers treat the notice of an event that is likely to become a claim as an actual claim under the policy, which can be important for insureds that are changing carriers or dropping coverage.

Extended Reporting Period protection is an under-appreciated feature of EPLI policies, one that will take on a growing importance if carriers lose interest in the market. We note that many carriers have shortened up the length of ERP they are offering.

All carriers offer an ERP, but length and cost differ. The shortest minimum period in our survey was six months. A variety of carriers offered at least one year, with three or more years available. Several carriers report that the ERP is negotiable in term and cost, which is dangerous for the insured. Make sure that this negotiation takes place <u>before</u> the carrier loses interest in your EPLI business.

A long ERP could be enormously valuable should the EPLI carrier decide it did not want to continue offering this line of coverage (though we don't expect such a development).

Selection of Counsel

In previous years, we have been vocal in our criticism of carriers that do not allow the insured a voice in the selection of counsel. We believe that the relationship between counsel and client is a precious one, as trusting as the bond between patient and doctor.

At the same time, we agree with the concern of carriers that unqualified legal representation can-not be allowed, and that control over fees is necessary in a line like EPLI. Indeed, one carrier has told us that the primary reason they are reluctant to enter the smaller employer market is their belief that such employers often use improper counsel, and take employment actions without legal advice.

Therefore, we are pleased to report that, while most carriers continue to control the selection of counsel, almost all are very flexible in allowing the insured to select or approve counsel. If the insured requests specific counsel approval at the right time (during proposal negotiations), the carrier is likely to approve the insured's choice.

A few carriers offer the insured a choice of an indemnity policy, which allows the insured full control over selection of counsel. While some dispute our attraction to indemnity policies (since an uncovered allegation may not be defended by an indemnity policy), we still think control over counsel is of enough value to make indemnity policies worth consideration.

Note that the carriers that are primarily interested in larger employers are more likely to give selection of counsel to the insured; carriers that specialize in smaller insureds are less likely to be able to invest the time necessary to approve special counsel requests, since they are charging correspondingly less premium. However, in our experience, carriers are generally willing to allow the use of the insured's choice of counsel, as long as they are clearly qualified. For the insured that asks, even the smaller carriers are willing to allow selection by the insured.

We regularly get phone calls from EPL defense law firms that are finding carriers are no longer willing to retain them, as they restrict more and more of their work to existing panel members. These may be qualified attorneys with a good record of successfully guiding clients to a resolution. As the EPLI business matured, carriers needed to reduce the number of law firms that they worked with and ideally reduce cost. This has unfortunately left many competent attorneys on the outside looking in, wondering whether they will continue to be able to represent their clients.

We find that many carriers are willing to approve use of the insured's preferred counsel <u>especially</u> if that agreement is reached while the insurance policy is being purchased (or renewed). Insured's should not wait until they have a claim in hand before requesting approval of their preferred counsel.

Consent to Settle

Carriers are still reluctant to allow insureds much control over settlement, understandably, since EPL suits often involve a good deal of emotion. Both employer and employee are often willing to continue their fight in court long after it makes economic sense to settle. Carriers are reluctant to fund such battles, of course.

The so-called "Hammer Clause" allows a carrier to limit its claim payment to no more than the amount it could have settled for plus defense costs. This protects the carrier against a "litigate at any cost" insured, while protecting the employer against a "settle it, who cares about the precedent" carrier.

The Hammer Clause causes both insured and insurer some unhappiness; so-called "soft" hammer clauses exist, which share the cost above the claim between the carrier and the insured. Originally offered by Royal, many carriers now make it a feature of their products. Please see our table Claims Reporting for specifics.

Most carriers will not force an insured to settle, but are free from any additional cost (settlement or defense) obligations. A few policies continue to allow the carrier to settle without the insured's consent, which is very dangerous to the employer. In practice, if the insured has a good reason to continue the defense, carriers will not enforce their hammer clause.

Prior Acts Coverage

Prior Acts coverage is a very valuable protection that used to be difficult to obtain. Underwriters were reluctant to insure the prior activities of an employer, anticipating that only those organizations that needed coverage would buy Prior Acts protection.

This ignored the reality that the EPLI exposure is one that confronted all employers, and that even the best managed risks still needed coverage. Just because an insured wanted Prior Acts coverage doesn't mean it was a higher-than-average risk.

As carriers competed to take business away from other carriers, though, they were forced to offer Prior Acts protection, because of course EPLI is written on a claims made basis. As they became more comfortable with the risk of a prior act, it became easier to offer the coverage even to new insureds. In fact, for many carriers, there is no additional cost for Prior Acts coverage.

So, we now see carriers reporting that they include Prior Acts in their standard coverage, with the option of limiting the exposure *via* Retroactive Dates. Even those that do not include it in their standard form can include it by endorsement.

Territory

Coverage for events that take place outside of the U.S., Canada, or related territories is more important for insureds than ever. All policies reviewed offer worldwide coverage for suits brought in the U.S. or Canada and territories. Most carriers also offer the option of true worldwide coverage (suits brought anywhere).

Risk Management Services

Finally, our table Risk Management Services identifies the types of value-added services offered by EPLI carriers. These services are particularly appropriate for EPLI, offering the same type of benefit to the insured that, for example, loss control engineering does for property insurance.

Value-added services is a primary source of product innovation in the EPLI business, and one in which numerous vendors, including law firms, are competing for business. Several carriers have reported enhanced services, and/or are offering them to more categories of insureds.

Like loss control engineering, it presents the opportunity for carriers and insureds to jointly benefit. We hope that value added services do not take a back seat as product innovation slows and an emphasis on expense control continues.

Valued-added Risk Management services are an appealing extra benefit to insureds. In talking with them (and the service providers), we are puzzled why so many seem to not know that these services are offered.

We would like to see more use of these services by insureds, and encourage their advisors to more effectively communicate their value.

Summary

EPL is a strong but mature business in the United States, with little in the way of growth opportunities for the line in general. Opportunities exist in expanding the purchase of coverage by smaller employers, whether through a monoline policy, as a part of a Management Liability package (with D&O), or added to a BOP-type package. For carriers with capabilities beyond the U.S., foreign expansion of coverage is likely to be a good opportunity for growth in premium and diversification.

Carriers are clearly responding to the unsustainably high level of claims by raising rates and deductibles, as well as by implementing further controls on the cost of defense. Insureds are likely to resist these increases but are perhaps going to find it difficult to find insurers willing to undercut the incumbent. Still, the industry is known for buying market share by reducing rates for insureds that are considering changing carriers. Here's hoping that it resists that urge this time.

Costs for defense are escalating as cases become more complex; carriers are trying different methods of managing these increases, such as bringing routine claims in-house, defense panels are being tightened by making them smaller, and putting further cost restrictions on attorneys. To some extent controls on billing rates are being negotiated as well.

Defense firms are responding to this in a variety of ways, including fixed fee billings for certain types of claims; we expect to see more of this in the near future. There seems to be more attorneys interested in EPL insurance defense work than there is work available. How the legal profession and the insurance industry respond to this challenge over the next five years will be fascinating.

EPLI value-added services remain an important part of the product, when done right offering employers access to tools that can truly make a difference in the frequency and the severity of claims – as well as the bad feelings that accompany employee/employer disputes.

All-in-all, EPLI remains an exciting product line, having realized its potential of being a coverage found in the portfolio of most employers. Managing its profitability remains its biggest challenge.

An Interview with Mike Naclerio

President of Risk Management Services Provider Enquiron

Recently, I had the opportunity to sit down and discuss risk management services trends with Mike Naclerio, President of Enquiron™. Originally known as *the* workplace HELPLINE, Enquiron has spent the last 18 years providing its patented and quantifiable risk reduction solutions to the management liability insurance market. The last fifteen of those years have been primarily focused in the EPLI space, providing the HELPLINE solution through affiliations with carriers, MGA's, brokers, and agents. I thought it would be interesting to hear what Enquiron has learned along the way and how they will apply it to help insureds and their insurers reduce the frequency and severity of claims in the future.

Rick: What is the single-biggest lesson you can share based on the experiences of Enquiron in the risk management world?

Mike: The industry knows the answer to this question: early intervention really does work. It can be demonstrated time and time again that helping insureds avoid errors EARLY in their HR practices and employee relations processes results in better EPLI claims experience. This includes not only preventing claims from happening altogether, but also reducing the overall claims expense even if it could not be completely prevented. By providing effective front-end risk management, insurers can experience reduced claims and a healthier bottom line. In fact, one of our MGA partners examined their claims experience after partnering with Enquiron for several years and documented a significant reduction in their cost of claims filed. A good portion of this reduction was attributed to the proactive, pre-claim early intervention of our HELPLINE solution.

Rick: What do you mean by the term 'pre-claim early intervention' and when is the earliest that you can intervene?

Mike: Insurers often use the term 'intervene' to describe early contact with the claimant <u>after</u> a claim is formally filed by the insured. In our use, we refer to a stage even earlier – working with the insured before there is a problem or as soon as the problem arises within the workplace – well before the insurance claim materializes. We help insureds avoid or mitigate circumstances that often lead to a claim. Waiting until those circumstances trigger a claim causes a missed opportunity to help mitigate risk at the pre-claim stage. What we have seen is that most industry risk management solutions are underutilized by the insureds and the lack of utilization fails to capitalize on this critical stage in the claims control process. Providing effective risk management services means encouraging the use of high-end HR and legal resources, offering actionable advice so insureds can make GOOD decisions with confidence and avoid making poor decisions that often lead to claims. Through proactive use of a full service risk management solution, it is possible to shape claims from the earliest point possible; insureds may not be able to completely avoid a claim but if the best possible scenario has occurred, those claims costs can be much lower.

Rick: What are some of the lessons learned in the industry over the last fifteen years with EPLI risk management offerings?

Mike: Some of our partners have learned from prior experience that relying on a generic "website" or "hotline" service is not effective and leaves money on the table by missing the opportunity to truly improve insureds' understanding of their role in reducing risk. Instead, our partners have chosen to educate and shepherd their insureds through HR and legal related matters by providing high-end experts and resources AND going the extra step of providing live customer support access to people who can really help them. By taking advantage of these services and seeking specific advice to employment related questions, insureds develop an active role in helping reduce their own risk.

Everybody wins. The insureds get the ability to spend time focused on their own core business growth instead of researching and spending time and money focused on HR and legal matters, or worse, relying on an answer they found in a web search that may or that is "general guidance" and may not apply to their specific situation. The carriers get reduced amounts of claims, reduced overall claims costs and increased insured retention and brand recognition for providing real value added services to their insureds. And, the brokers and agents get high end services that they can market to help sell and retain business – while feeling confident they have a solution backed by real customer service that will strengthen, not lessen, their most important asset – their reputation. And most importantly, the insured stays out of the very unpleasant – and often expensive – claim that might have been avoided.

Enquiron has utilization rates that lead the industry by a wide margin, even with a very conservative definition. Our partners know it is all about offering real value, not just a *nice-to-have* hotline number that insureds *can* call IF they happen to remember it when they are at a decision point or crisis. They also realize that if the solution is not utilized, it has no value. Enhanced retention and the pre-claim early intervention are impossible and an opportunity is lost. Our partners choose to provide HELPLINE services to their insureds because they understand the unique business development, brand development, retention and risk reduction and claims management value of this unique services strategy. They also know and trust that Enquiron will drive utilization through direct, personalized outreach to insureds and encourage access to the solution.

Rick: What will you do with this knowledge to help make your business partners better and to further improve risk management in the insurance market?

Mike: Continue to innovate and provide services that work and provide real return on investment to our partners. Over the last several years, we have been investing time and energy into developing additional risk management and compliance solutions to address unmet market needs. Cyber risk is an area that has come up frequently. In response, we have partnered with an industry-leader that provides a superior level of cyber risk management tools and online resources. We are now offering these services as an additional risk management module to create a seamless, one-stop insured destination through our current HELPLINE solution, or stand-alone. We have already generated the high insured usage levels through our base EPLI risk management solution, so our partners can gain immediate value when introducing this new module to the same insureds that are interacting with Enquiron as a trusted advisor already. As the need for cyber risk support matures, we are in place to provide help.

At Enquiron, we are also thinking about a lot of other areas where businesses have key questions that go deep into areas they may not be comfortable with on their own. The way to think about the goals of Enquiron is, "If you might need to call your business attorney or consultant to ask a question, we might be offering a solution." We are on a mission to deliver superior personalized strategic business advisory services. We help employers minimize risk, maintain compliance, reduce expenses and generate profitable growth.

Rick: Thank you, Mike.

Mike Naclerio is the President of Enquiron, which provides actionable HR and employment law compliance advice from attorneys as well as resources and tools to address employers' specific legal and best-practices HR questions. He can be reached at mnaclerio@enquiron.com or (303) 452-4571

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About The Author

Richard S. Betterley, CMC, is the President of Betterley Risk Consultants, an independent insurance and alternative risk management consulting firm. BRC, founded in 1932, provides independent advice and counsel on insurable risk, coverage, alternatives to traditional insurance, and related services to corporations, educational institutions, and other organizations throughout the U.S. It does not sell insurance or related services.

Rick is a frequent speaker, author, and expert witness on specialty insurance products and related services. He is a member of the Professional Liability Underwriting Society and the Institute of Management Consultants. He joined the firm in 1975.

Rick created The Betterley Report in 1994 to be the objective source of information about specialty insurance products. Now published 6 times annually, The Betterley Report is known for its in-depth coverage of Management Liability, Cyber Risk, Privacy, and Intellectual Property and Media insurance products.

More recently, Rick created The Betterley Report Blog on Specialty Insurance Products, which offers readers updates on and insight into insurance products such as those covered in The Betterley Report. It provides him with a platform to more frequently and informally comment on product updates and newly announced products, as well as trends in the specialty insurance industry. www.betterley.com/blog

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