December 2014

BRC

THE BETTERLEY REPORT

EMPLOYMENT PRACTICES LIABILITY INSURANCE MARKET SURVEY 2014:

Rates in Flux as Carriers Seek Rate Adequacy but Encounter Renewed Competition

Richard S. Betterley, CMC
President
Betterley Risk Consultants, Inc.

Highlights of This Issue

- Rates for Other Insurance Lines May be Softening, but Less So for EPLI
- MarketStance Reports on Volume and Growth Opportunities
- 2 New Carriers Added to EPLI Market Survey
- Expanded Information About Risk Management Services Included

Next Issue
February 2015
Technology E&O Market Survey

Like What You See in this Executive Summary?

You won't believe the value in the full reports.
Now Available on **IRMI® Online** and **ReferenceConnect™**

The Betterley Report provides insightful insurer analysis on these six markets and coverage lines:

- Cyber/Privacy Insurance Market Survey
- Technology Errors & Omissions
- Employment Practices Liability Insurance
- Side A D&O Liability Insurance
- Private Company Management Liability Insurance
- Intellectual Property and Media Liability Insurance

Each annual report provides a comprehensive review (50 to 175 pages) with numerous exhibits of the critical differences in insurers' coverage, market appetite, and capacity. **You save valuable time** because *The Betterley Report* has done the groundwork for you, providing practical information in a fully searchable online format.

What do you think this dedicated research team and related market analysis is worth to you and your team? Well, you are going to be pleasantly surprised when you see how we've priced it for you.

Agents and Brokers—Sell more and grow revenue by pinpointing errors in competitors' policies/proposals.

Risk Managers and Insurance Buyers—Identify, eliminate, or avoid coverage gaps with coverage comparison charts.

Underwriters—Research competitors with quick policy comparisons.

Attorneys—Keep up with year-to-year trends in policy form development.

Consultants—Identify markets and match them up to your clients' needs.

See more benefits and read Executive Summaries of each report at **www.IRMI.com/Go/3.**

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 products from thirty-one carriers that form the core of this market, having added Hanover and Maxum. Professional Liability Insurance Services (PLIS) was removed from the survey because they did not respond to our attempts to update their information. Progressive was removed as we understand they are no longer offering the product. 5Star's products are now listed as Target Professional Programs.

EPLI coverage can also be found in Management Liability insurance packages. Readers may wish to read our Private Company Management Liability Market Survey (August 2014), which reviews so-called "Management Liability" products that can, and usually do, include EPLI.

Again this year we have added commentary on the size and growth prospects of EPLI by insurance demographics and economic experts MarketStance. Their data is much more refined (but consistent with) ours, and so it is a real addition to our Reports to include their insight. www.marketstance.com

Longtime readers of EPLI Market Survey know of our deep interest in the value-added risk management services that are offered by most insurers. In past issues we utilized a single table to capture essential descriptive information about those products.

We believe that there is more differentiation in these services than can be captured in a single table, and this year have expanded it into four tables:

- A table that lists the types of services (i.e., audit, consultation, reporting lines, etc.)
- Topics that those consultation services can include (HR, Legal and Regulatory, and are they limited to topics generally covered by EPL policies) and who provides those services (attorney, HR consultant, paralegal)
- Training and education services
- Outreach – how does the carrier inform the insured and the broker that these services are available

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

List of Tables

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.

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 (BOP-type policies) are available but appear to be limited to smaller employers, as carriers recognize the importance of underwriting and claims expertise as vital to EPLI success.

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.

State of the Market

Rates and Retentions

Rates continue to drift up, although there is resistance from competing carriers. Incumbent carriers want (and often need) higher rates, but carriers that would like to steal customers away are willing to forgo an increase to gain a customer. This works to block the rate increases that are probably needed by many carriers. Still, rates do

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.

Sample Carrier Responses When Asked about EPLI Rate Trends			
Carrier Size	Carrier Market Focus (employer size)	Rate Trend	
		Market in General	Own Rates
Large	All	No comment	+ double digits
Large	All	+10%	+5%
Mid	Small-mid	+ 5%	+10%
Small	Small	+10-15%	+10-15%
Large	All	+8-12%	+8-12%
Mid	Small	No comment	+7%
Mid	Small	Flat-10%	Flat-10%
Small	Small	0-+25%	0-+5%
Large	Large	-5-10%	-5%
Large	Large	Flat except CA +5-10%	Flat except CA +5-10%

rise, as not all insureds get a competing quote when faced with an increase, and of those that do, many will accept a small increase rather than change carriers.

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 required. 2014 has been a period of EPLI rate increases after continued deterioration in loss experience. This trend is expected to continue into 2015, 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.

In the table above are some of the (not for attribution) carrier responses when we asked them their view of EPLI rate trends for 2015. It shows the diverse range of responses to a market that needs higher rates but has difficulty obtaining them because competitors are willing to gain market share through price competition.

Finally, retentions (meaning deductibles or self-insured retentions) show somewhat more consistency amongst the commenting carriers. We saw no evidence of movement either way in reten-

tions. The trend was flat, except (of course) in California, where the trend is up.

Volume

EPLI has been a mature market for many years, with slow growth in the U.S. except from rate increases. The Private Company Management Liability product line has probably absorbed some of the premium that used to go to the monoline EPL product, but there are still many too many smaller employers that don't buy EPLI – and should.

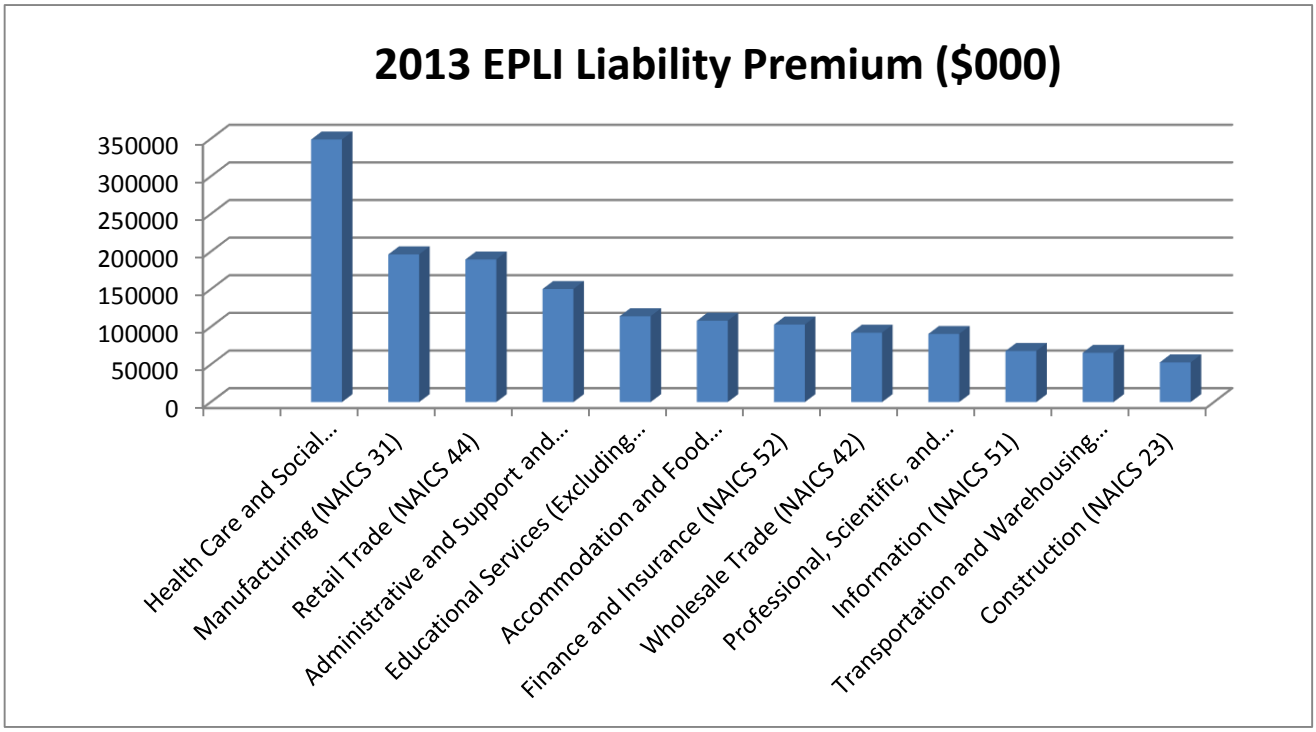
The volume of business (gross written premium) for 2013 is stable at $1.708 billion, essentially unchanged, according to MarketStance, a respected source for market demographic, insurance, and economic information for the Commercial P&C Industry. This despite carrier efforts to strengthen rates and an improving economy.

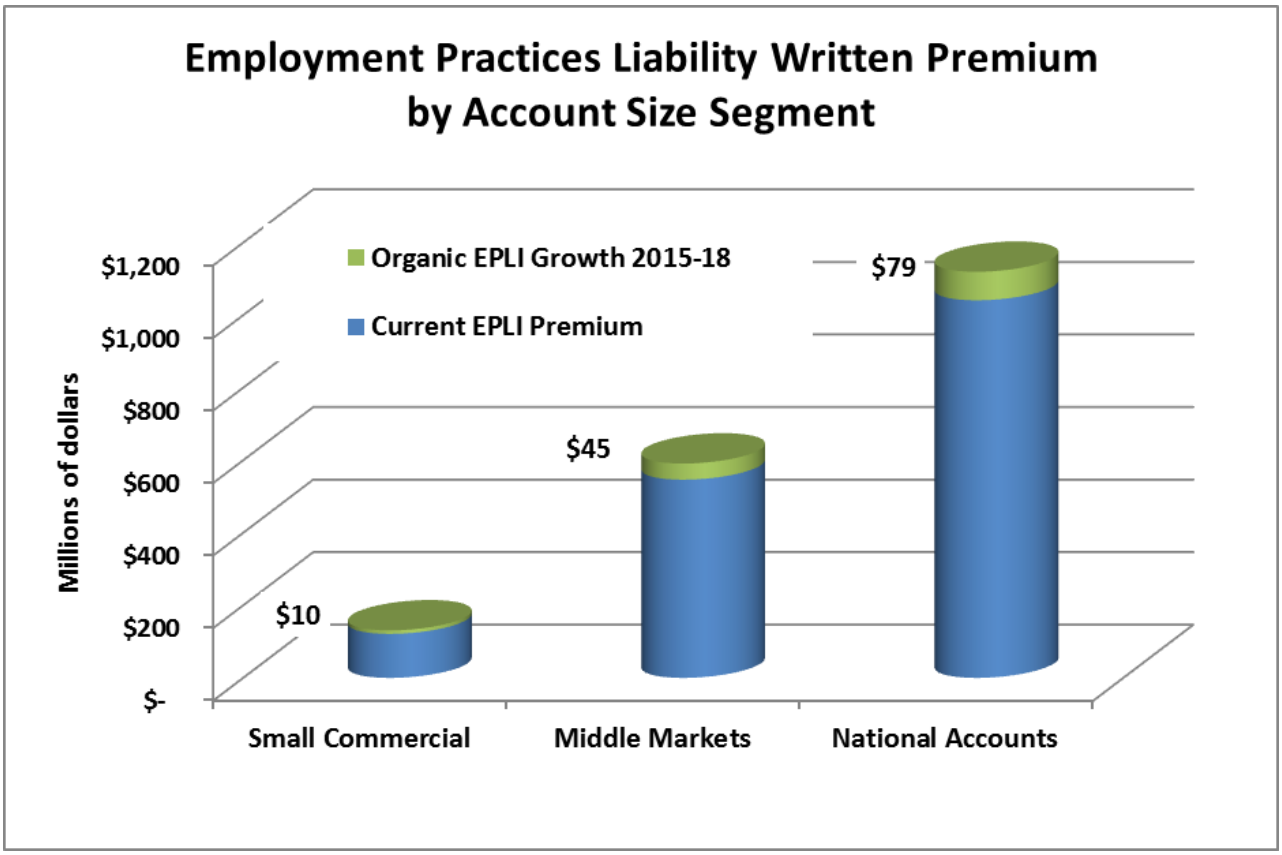
Thinking about 2014, rate trends and possibly growth in market penetration and employment might move the annual premium up to as much as $1.75 billion.

According to MarketStance, health care and social assistance (NAICS 62) now accounts for 20% of total EPLI premiums (see chart below for premium breakdown by industry classification).

Market penetration is still very low for Small Commercial accounts. If only half of the uncovered Small Commercial market were to purchase EPLI the additional premium would exceed $2 billion, MarketStance estimates. It is really unfortunate that so few Small Commercial insureds buy EPLI coverage. We suspect that they continue to not realize the potential size of a claim, don't think their employees will bring suit, and believe that they can't afford the premium.

Economic growth and it's (hoped for) accompanying increase in employment brings with it the





potential for increased premiums. That is true only if the industry can achieve rate adequacy and bring on new insureds.

To illustrate the potential impact of economic growth on EPLI premiums, MarketStance prepared the chart above to illustrate the current level of premiums and the expected premium growth that might occur solely as a result of employment growth for the period 2015-18. The blue portion of the column shows the current total premiums written, while the green shows the new premium attributable to employment growth.

We note that premiums charged to an individual insured often are not adjusted for increases (in head count). Insureds tend to resist an increase in premium even when it is logically appropriate due to higher employment levels (more employees = more chance of a claim is the theory if not the actual practice).

With this level of potential growth, it's important to pay attention to every corner of growth opportunity. And while it might be important to focus on large EPLI premium states such as New York, California or Texas which have significant base premium and expected growth, smaller base premium states also present significant opportunities.

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.

Only five 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 2014.

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 cannot 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 emo-

tion. 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 tables describing various Risk Management Services identify 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. In particular, carriers are favoring vendors that actively reach out to the insureds to encourage their use of these services.

Why?

In the past, it seemed there were two types of carriers – those that encouraged the use of Risk Management Services and those that took a 'tick the box of product features' approach. The former believed that services improve the quality of the risk and improved the stickiness of the account relationship. The latter really didn't care whether the services were used and didn't want to pay more than the minimum to satisfy the broker and the insured.

It seems to us now that more carriers subscribe to the quality approach. We have spoken with many insureds that value the services benefit at least as much as they value the insurance benefit (risk transfer).

We have expanded our research about these services to better recognize the differences between them and, we hope, to help insureds and their advisors understand the scope of what is being provided.

We now provide four tables of information.

- Risk Management Services Included:
  - Risk Management self-audit so the insured can assess its EPL practices
  - Employment-related consultations (typically by an attorney)
  - An anonymous employee whistle-blower service
  - Sample or template employee handbooks
  - Training courses or materials
- The types of Consultation Services that can be included
  - Human Resources practices
  - Legal and regulatory issues
  - Whether the topics must be those typically covered by an EPLI policy
  - Who provides the services (attorneys, HR consultants, or paralegals)
  - How often the services can be used
- Training and education services
  - How many are offered
  - Do they qualify for continuing education credits
  - Is usage tracked by the provider
  - Is usage reported to the insurer
  - How many courses can be taken
  - So the courses meet state training mandates
- Outreach
  - How does the insurer inform the insured and the broker that the services are available and to encourage their use

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 would like to achieve higher premiums to cover the unsustainably high level of claims by raising rates and deductibles, as well as by implementing further controls on the cost of defense. But competition from other carriers and the insureds' resistance to these increases makes this difficult to achieve. Will the EPLI market be able to obtain higher rates? Hard to say, but it will be difficult.

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.

* *

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

Like What You See in this Executive Summary?

You won't believe the value in the full reports.
Now Available on **IRMI® Online** and **ReferenceConnect™**

The Betterley Report provides insightful insurer analysis on these six markets and coverage lines:

- Cyber/Privacy Insurance Market Survey
- Technology Errors & Omissions
- Employment Practices Liability Insurance
- Side A D&O Liability Insurance
- Private Company Management Liability Insurance
- Intellectual Property and Media Liability Insurance

Each annual report provides a comprehensive review (50 to 175 pages) with numerous exhibits of the critical differences in insurers' coverage, market appetite, and capacity. **You save valuable time** because *The Betterley Report* has done the groundwork for you, providing practical information in a fully searchable online format.

What do you think this dedicated research team and related market analysis is worth to you and your team? Well, you are going to be pleasantly surprised when you see how we've priced it for you.

Agents and Brokers—Sell more and grow revenue by pinpointing errors in competitors' policies/proposals.

Risk Managers and Insurance Buyers—Identify, eliminate, or avoid coverage gaps with coverage comparison charts.

Underwriters—Research competitors with quick policy comparisons.

Attorneys—Keep up with year-to-year trends in policy form development.

Consultants—Identify markets and match them up to your clients' needs.

See more benefits and read Executive Summaries of each report at **www.IRMI.com/Go/3.**

The Betterley Report

The Betterley Report, your independent guide to specialty insurance products, is a series of six comprehensive reports published annually. Each report exhaustively reviews a single hot specialty insurance product, providing essential information such as:

- Who are the leading carriers?
- Complete contact information
- Target and prohibited markets
- Capacity, deductibles, and commission ranges
- Sample premiums (where available)
- Critical coverage and claims differences
- Exclusionary language
- Risk management services

The Betterley Reports are produced annually, and range from 50 to 175 pages in length. Current analyses include:

- Cyber and Privacy Risk Policies
- Technology Risk Insurance
- Employment Practices Liability Insurance (EPLI)
- Private Company Management Liability
- Side A D & O Liability
- Intellectual Property and Media Liability

The Betterley Reports are a huge timesaver for busy risk management professionals who need to be up-to-date on insurance products for their clients. Need to identify and evaluate the coverage, capacity and contacts for your clients? Need the best analysis of leading edge insurance products? We've done the ground work for you!

The Betterley Report is distributed by International Risk Management Institute, Inc. (IRMI) and may be accessed by subscribers on IRMI Online. To purchase a subscription, call IRMI Client Services at (800) 827-4242 or learn more on IRMI.com.

Betterley Risk Consultants is an independent insurance and alternative risk management consulting firm. Founded in 1932, it provides independent advice and counsel to corporations, educational institutions, and other organizations throughout the U.S. It does not sell insurance nor provide insurance-related services.

Betterley Risk Consultants, Inc.
Thirteen Loring Way • Sterling, Massachusetts 01564-2465
Phone (978) 422-3366 • Fax (978) 422-3365
Toll Free (877) 422-3366
e-mail rbetterley@betterley.com

The editor has attempted to ensure that the information in each issue is accurate at the time it was obtained. Opinions on insurance, financial, legal, and regulatory matters are those of the editor and others; professional counsel should be consulted before any action or decision based on this matter is taken. Note: all product names referred to herein are the properties of their respective owners.

The Betterley Report is published six times yearly by Betterley Risk Consultants, Inc. This material is copyrighted, with all rights reserved. ISSN 1089-0513