


29th National Conference on

EMPLOYMENT PRACTICES LIABILITY INSURANCE

January 26–28, 2021 EST  Virtual Conference  **EARN CLE
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Senior Vice President
Marsh USA Inc.

NEW For This Year:

- > **POST-ELECTION BRIEFING & YEAR IN REVIEW:** Insurer, Broker and Carrier Perspectives on EPLI Policy Changes and Risk Appetite Amid Covid-19
- > **Race, Gender and LGBTQ Discrimination Claims in Practice:** Expert Practitioners Discuss New, Evolving and Surprising Trends, Developments and Risk Factors
- > **Political Speech in the Workplace:** What New, Emerging Legal Trends and EPLI Coverage Mean for Employers Moving Forward
- > **What Would You Do If...? The Most Vexing Back to the Office Dilemmas and How to Resolve Them:** Masks, Social Distancing, Whistleblowing and More
- > **Cyber Security, IP and Proprietary Risks** - and Their Interplay with Remote Work and Employee Monitoring
- > **The Uptick in Sexual Harassment Claims:** Practitioners Discuss the Finer Points of Investigations, Rising Settlements, Employee Training and What Is on the Horizon for 2021

Benchmark and Network with In-House Counsel, Chief Diversity Officers and Insurance Executives from:

- Warner Music Group
- NBC Universal
- Marsh & McLennan Companies, Inc.
- Dow Jones
- USLI
- Univision Communications Inc.
- Willis Towers Watson
- Wayfair
- National Basketball Association
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Strategic Guidance for Tackling the Newest, High Stakes Challenges Affecting Litigation and Claims Outcomes!

This acclaimed, longstanding conference returns in a new interactive, virtual venue! This **newly reimagined** event continues its track record as the **annual, must-attend meeting for outside practitioners, in-house counsel and insurance executives across the country.**

Here is just a glimpse of what's new for 2021, and why you cannot afford to miss out:

- > Join new **in-house counsel faculty** as they address post-election, 2021 risk management strategy
- > Hear from Chief Diversity, People and Inclusion Officers on "What Really Works for Sensitivity Training **(and What Doesn't)**"
- > Gain updates on the surprising, new trends and unwritten best practices for **race, gender and LGBTQ discrimination claims management**
- > Benefit from new guidance for addressing **political speech in the workplace**: What new, evolving EPLI coverage means for employers moving forward
- > Participate in critical discussions on the finer points of EPLI, wage & hour claims and **PAGA** actions
- > Ensure that you are up-to-speed on **cyber security, IP and proprietary** risks impacting remote work and employee monitoring
- > Hear the latest lessons for handling **pay equity and sexual harassment claims**, investigations, rising settlements and employee training
- > Obtain need-to-know takeaways on restrictive covenants: How practitioners are navigating new **grey areas of non-competes and enforceability**

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**Gordon Rees Scully Mansukhani,
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Darrell S. Gay
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Jonathan Kurens, Esq.
Senior Vice President
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EPL Thought & Product Leader,
Claims Advocate, FINEX
**Willis Towers Watson
(New York, NY)**



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Director, Management Liability
and Specialty Claims
Nationwide (New York, NY)



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Shareholder, Co-Chair, Labor,
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Associate General Counsel
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Director & Associate General
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Risk Control Director, Management
Liability and Financial Institutions
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Vice President/EPL National
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John Lino
Chief Diversity Officer
**Reed Smith LLP
(Los Angeles, CA)**



Maryrose Maness
SVP, Deputy General Counsel
**Warner Music Group
(New York, NY)**



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Managing Partner
**Cruser, Mitchell, Novitz, Sanchez,
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Partner
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(Los Angeles, CA)**



KeyAnna Schmiedl
Global Head of Culture
& Inclusion
Wayfair (Boston, MA)



Molly T. Senger
Of Counsel
**Gibson, Dunn & Crutcher LLP
(Washington, DC)**



Oris Stuart
EVP, Chief People & Inclusion Officer
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Vice President & Head of Legal
**The Fresh Market
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Director & Senior
Employment Counsel
**Boehringer Ingelheim USA
Corporation (Ridgefield, CT)**



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2nd Vice President, Employment
Practices Liability Product Manager
Travelers (Hartford, CA)



Brent Wilson
Attorney
**Elarbee, Thompson, Sapp & Wilson
LLP (Atlanta, GA)**



Scott J. Witlin
Partner
**Barnes & Thornburg LLP
(Los Angeles, CA)**




Tope Yusuf
Vice President, Employment
NBC Universal (New York, NY)

Day One

Tuesday, January 26, 2021 (EST)

10:15

Co-Chairs' Opening Remarks

 Mercedes Colwin, Partner, **Gordon Rees Scully Mansukhani, LLP**

Darrell S. Gay, Partner, **Arent Fox**

Jonathan Kurens, Esq., Senior Vice President, **Marsh USA Inc.**

10:30

Opening Keynote Address

Please consult the event website for an upcoming announcement.

11:00 **POST-ELECTION BRIEFING & YEAR IN REVIEW**

Insurer, Broker and Carrier Perspectives on EPLI Policy Changes and Risk Appetite Amid COVID-19

 Talene M. Carter (Megerian), EPL Thought & Product Leader, Claims Advocate, FINEX, **Willis Towers Watson**

Chris Lavelle, CPCU, RPLU, Vice President/EPL National Practice Leader, **USLI**

As EPLI claims increase as a result of COVID-19, practitioners and policyholders continue to adapt to the new realities of handling them. This important opening session will delve into the new landscape of risk and policies, as well as the outlook for 2021.


Key topics of discussion will include:

- How COVID-19 has affected the industry's risk appetite and products
- The newest, emerging factors affecting EPLI risk assessments, claims management and policies
- How insurers have changed the way coverage is assessed due to COVID-19
- When an employer carries more or less of a risk
- Carriers' concerns about staff working from home and returning to the workplace: The rising interplay of personal injury, health and safety, and EPLI claims
- Perspectives on anti-harassment, diversity, inclusion and workplace sensitivity training

11:45 Break

12:15

EPLI Claims and Increasing Litigation: Discussing What to Flag Before It's Too Late: Post-Election, 2021 EPLI Risk Management Strategies

 Louis P. DiLorenzo, Member, **BOND, SCHOENECK & KING ATTORNEYS (New York, NY)**

Brett Wilson, Attorney, **Elarbee, Thompson, Sapp & Wilson LLP (Atlanta, GA)**

Jane Howard-Martin, Vice President, Labour & Employment/Plant Support, **Toyota (Plano, TX)**

Steve Chariyasatit, Director & Associate General Counsel, Employment, **Instacart (San Francisco, CA)**

As EPLI products continue to evolve and expand, practitioners and policyholders need to be aware of the newest, most critical aspects of underwriting, policies, and coverage forms.

In this opening session, leading executives will address the state of the market, and the current trends and forces affecting the future of EPLI risk. Topic include:

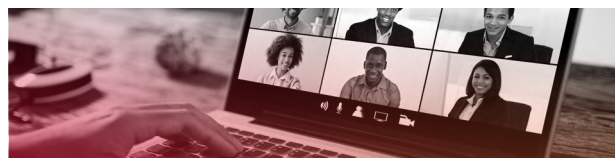
- The new administration and anticipated changes at the legislative level and courts
- The continuing impact of COVID-19 and the outlook on risk for 2021

1:15

Interview with the EEOC

 Charlotte A. Burrows, Commissioner, **U.S. Equal Employment Opportunity Commission (EEOC) (Washington, DC)**

2:00 **1:1 Networking**



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2:10 Break

2:30

NEW!


Race, Gender and LGBTQ Discrimination Claims in Practice: Expert Practitioners Discuss Surprising Trends, Developments and Risk Factors

 Tope Yusuf, Vice President, Employment, **NBC Universal**
Keisha-Ann G. Gray, Partner, **Proskauer**

- Update on evolving harassment and retaliation claims based on sex and race
- The practical impact of the SCOTUS decision on Title 7
- The unwritten rules of the road for recruitment, retention and succession planning
- How recent legislative and case law developments have affected the EPLI landscape
- How practitioners are reassessing and mitigating the risk of discrimination claims
- Trends in settlement outcomes

3:30 **NEW!**

Political Speech in the Workplace: Critical Updates and Their Real-World Impact on Liability Risks and EPLI Coverage

 Molly T. Senger, Of Counsel, **Gibson, Dunn & Crutcher LLP**
Christopher Williams, 2nd Vice President, Employment Practices Liability Product Manager, **Travelers**

Expert panelists will be analyzing the evolving legal landscape posed by the political developments, policy changes and more. Topics include:

- Balancing religious liberties and freedom of speech
- Determining which policies are advisable or inadvisable for addressing political speech in the workplace
 - » Determining parameters that are lawful
 - » When and how far you can go in enforcing the policy

4:30


Closing Remarks Conference Adjourns to Day Two

Day Two

Wednesday, January 27, 2021 (EST)

10:15

Co-Chairs' Opening Remarks

 Mercedes Colwin, Partner, **Gordon Rees Scully Mansukhani, LLP**

Darrell S. Gay, Partner, **Arent Fox**

Jonathan Kurens, Esq., Senior Vice President, **Marsh USA Inc.**

10:30

Special Interview

 Oris Stuart, EVP, Chief People & Inclusion Officer, **National Basketball Association (NBA)**


Moderated by: Darrell S. Gay, Partner, **Arent Fox**

11:00

NEW!



What Would You Do If...? The Most Vexing Back to the Office Dilemmas and How to Resolve Them: Masks, Social Distancing, Whistleblowing

 Gerald L. Walden, Jr., Vice President & Head of Legal, **The Fresh Market**

Dove A. E. Burns, Partner, **Obermayer Rebmann Maxwell & Hippel LLP**

Joseph J. Centeno, Shareholder, **Buchanan, Ingersoll & Rooney**

- Determining how to lawfully and efficiently transfer the work location from on-site to home
 - » Assessing and monitoring employee productivity and adherence to company health and safety, and other policies
- Proven best practices for a safe return to work: Navigating concerns around social distancing, whistleblowing, anxiety, and conflict resolution
- Understanding OSHA expectations and analyzing the guidance it offers to employers

12:15 Break

12:30

Keynote Address

Please consult the event website for an upcoming announcement.

1:00

EPLI, Wage & Hour Claims and PAGA Actions: The Newest High Stakes Questions Confronting Practitioners and Their Impact on Defense Strategies

 Andrew W. Russell, Partner, **Fox Rothschild LLP**

Scott J. Witlin, Partner, **Barnes & Thornburg LLP**

- The "Gig Economy" Post-Election: Status report on Employee vs. Independent Contractor Classification
- Exploring recent PAGA cases and their impact on future outcomes
 - » *Kim v. Reins*
 - » *ZB v. Superior Court*
- EPLI changes and how carriers are responding to the continued growth of wage and hour claims amid COVID-19
 - » Exploring sub-limits on wage and hour claims under EPLI policies
 - » Assessing how riders or addendums to EPLI policies for wage and hour claims affect the market
- Interpreting recent case law on independent contractor status in California
- DOL activity on joint employer liability in the wage and hour context
- Statute of Limitations, Waivers and Arbitration
 - » How far employers can go and where to draw the line

2:00 **1:1 Networking**



2:10 Break

2:30

NEW!

Workplace Diversity Case Study: The Lesser Known Takeaways from *Bostock v. Clayton County*

 Rondiene Novitz, Esq., Managing Partner, **Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP**

Teri E. Robins, JD, MBA, Owner, **TR Law Offices LLC**

Our experts will discuss the nuances of the landmark *Bostock v. Clayton County* case, and the impact on gender and sexual orientation discrimination claims in the employment context.

In addition to dissecting this important case, the panelists will discuss the practical application of this case and the remaining grey areas for interpretation.

3:15 **NEW!**

Cyber Security, IP and Proprietary Risks: Their Interplay with Remote Work and Employee Monitoring

 Maryrose Maness, SVP, Deputy General Counsel, **Warner Music Group**

This session will explore how to manage intensifying cybersecurity and data privacy risks posed by remote work.

- Securing proprietary information while employees work from home
- Addressing cybersecurity and confidentiality concerns when employees work with their personal computers
- Determining the lengths and limits of employee access to company data
- Reconciling the need to leverage new digital platforms with protecting sensitive, confidential data
- Overcoming obstacles to preserving attorney-client and work product privilege when working from home

4:00

NEW!

The Real-Life of Remote Working Arrangements: Employers, Insurers and Outside Counsel Discuss New Approaches to Resolving Disability, Sick Leave, FMLA and Accommodation Claims

 Kevin Chapman, Associate General Counsel, **News Corp, Dow Jones & Company**

Michael Homans, Partner, **HomansPeck, LLC**

- New trends in disability claims as a result of COVID-19 and how employers are addressing requests for reasonable accommodations
- Ensuring accessibility to websites considered to be a place of public accommodation
- How recent FMLA-related changes across different states have impacted disability claims
- Navigating the interplay of workers compensation with medical leaves of absence
- The extent of an employer's duty to accommodate employees who do not wish to return to work because of COVID-19 – and what is a disability under the Cares Act
- Determining which accommodations need to be put in place in light of COVID-19 for the Family's first act

4:45


Closing Remarks Conference Adjourns to Day Three

Day Three

Thursday, January 28, 2021 (EST)

10:15

Co-Chairs' Opening Remarks


 Mercedes Colwin, Partner, **Gordon Rees Scully Mansukhani, LLP**

Darrell S. Gay, Partner, **Arent Fox**

Jonathan Kurens, Esq., Senior Vice President, **Marsh USA Inc.**

10:30 **NEW!**

The Uptick in Sexual Harassment Claims in the Context of Remote and In-Person Work: Practitioners Discuss the Finer Points of Investigations, Rising Settlements, and Employee Training

 Raymond Cashman, Esq., CPCU, Director, Management Liability and Specialty Claims, **Nationwide**


Barbara L. Johnson, Esq., Managing Partner, **BLJohnsonLaw PLLC**

Kim Vance, Shareholder, **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**

- How to demonstrate conscious sensitivity and best practices in the workplace
- New approaches to assessing the economic damages in sexual harassment cases
- To what extent there has been an uptick in these cases as a result of COVID-19
- How to assess if training is resonating with employees and how often to re-train
- Navigating the delicate issues affecting the course of investigations
- Trends in settlement outcomes and what they reveal about the scope of potential liability
- How recent developments have affected the scope of EPLI coverage

11:30

Pay Equity Claims: Dissecting Recent Defense Wins/Losses and The Lesser Known Lessons for Addressing Wage Disparities

 Rachel Cowen, Partner, **McDermott Will & Emery LLP**
Camille Olson, Partner, **Seyfarth Shaw LLP**

This session will explore the extent to which COVID-19 has fueled more pay equity claims. Topics to be discussed include:

- Defending and covering pay equity claims intermingled with gender discrimination claims
- The new, emerging trends in pay equity litigation and what is coming down the pipeline
- Analyzing newly rolled-out state laws and changes to standards for pay equity


12:30 **1:1 Networking**



12:40 Break

1:00 **NEW!**

Chief Diversity & Inclusion Officer Roundtable: Perspectives on What Really Works for Sensitivity Training (and What Doesn't)


 John Lino, Chief Diversity Officer, **Reed Smith LLP**
KeyAnna Schmiedl, Global Head of Culture & Inclusion, **Wayfair**

New for 2021, benefit from an invaluable opportunity to hear big picture insights from some of the country's foremost Chief Diversity Officers. The session will focus on the practical challenges to enhancing diversity at all levels of the workforce, as well as the impact of recent developments on remaining gaps and inequities.

- Training on anti-harassment, diversity, inclusion and workplace sensitivity: What has worked and what hasn't
- How BLM has affected employers' understanding and commitment to diversity
- Exploring best practices to recruit, develop and retain diverse candidates
- Persisting hurdles to retaining women and minorities – and concrete examples of accommodations across the employment life cycle

2:00

Restrictive Covenants in Real Life: The Newest Grey Areas Of Non-Competes And Enforceability – Are the Goalposts Moving?

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

John W. Hamlin, Esq., Chief Counsel, Employment, Benefits and Governance, **Marsh & McLennan Companies, Inc.**

Leading practitioners will review sample non-competition clauses and provide helpful analysis on their potential enforceability. Audience members will be able to provide anonymous feedback via a user-friendly polling system – followed by a discussion of the results!

Additionally, our panelists will highlight the evolution of non-solicitation and non-competition clauses resulting from the pandemic and economic downturn.

2:45 **NEW!**

Biometrics: Critical Takeaways on the New Legal Lengths and Limits of Employee Screening


 Laura R. Lapidus, Esq., Risk Control Director, Management Liability and Financial Institutions, **CNA**

Stacey A. Campbell, Shareholder, **Campbell Litigation, P.C.**

- Changes to EPLI cyber policies and coverage for biometric screening
- Technologies that employers may use to take employees temperatures and identify employees
- How carriers view the risks and benefits of biometric screening
- The unwritten rules for protecting sensitive employee information collected with biometric screening and the way screening has changed as a result of COVID-19
- Jurisdictional analysis of state biometric screening laws
- Recent statutory developments in Illinois and their impact on other states' legislative activity
- Status and impact of pending legislation affecting biometrics
- How employers are updating and implementing data privacy policies
- Special considerations for healthcare information and potential HIPAA violations

3:30 **NEW!**

Litigation, Mediation and Arbitration "War Stories": A Round-Up of The Top 10 Most Effective Strategies for Remote vs. In-Person Proceedings

 Gary T. Lafayette, Partner, **Lafayette & Kumagai LLP**

Philip I. Weis, Director & Senior Employment Counsel, **Boehringer Ingelheim USA Corporation**

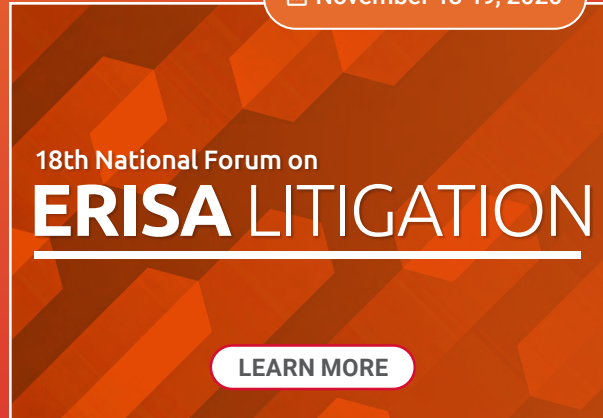
In this closing session, expert practitioners will share experiences and concrete examples of the newest challenges to managing cases and how to tailor strategies to the remote vs. in-person context.

4:15

Closing Remarks
End of Conference

Upcoming Events

 November 18-19, 2020



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Our new virtual events continue to be guided by our unifying philosophy: we believe that growth and success occurs when the power of people and the power of information come together. We may not be able to gather in person, but nothing stops connection and innovation.

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