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RESHAPING RISK: EPL &
D&O LIABILITY UNDER
THE CURRENT
ADMINISTRATION

August 12, 2026

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Questions

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Meet Your Presenters

Moderator:

- Kym Hadzick, Senior Vice President, RSUI

Panel:

- Jennifer R. Weinstein, Vice President, Management Liability Claims, Skyward Specialty Insurance
- Peter Woo, Principal, Jackson Lewis, P.C.

Agenda

- Insight into EPL claim trends
- Clarity on EEOC impact
- Perspective on D&O – private & public
- Guidance on underwriting and pricing
- Practical claims strategy considerations

Insight into EPL Claim Trends

Anti-DEI executive orders and EPLI Claims – Increased Enforcement

- The Attorney General directed the DOJ's Civil Rights Division to “investigate, eliminate, and penalize” illegal DEI programs in the private sector and educational institutions
- On 01.08.26, Vice President JD Vance announced the creation of a new position at the White House to conduct fraud investigations
 - The new role will be an Assistant Attorney General
 - It remains to be seen how the new role will interface with the Civil Rights Fraud Initiative, created in May 2025 to utilize the False Claims Act to “to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws”

Insight into EPL Claim Trends

Anti-DEI executive orders and EPLI Claims – Increased Enforcement

- In 2025, the DOJ has issued a number of civil investigative demands to employers seeking detailed information on their DEI programs
- We anticipate seeing additional, similar activity from the DOJ, the new position, and other agencies, such as the FCC, in carrying out their charges

Insight into EPL Claim Trends

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Insight into EPL Claim Trends

Understanding of the federal–state divide: Why heightened enforcement in California, New York, and Illinois is driving EPL exposure

- CA, NY and IL have higher frequency and severity
- WA, CO, NJ, and MA not far behind
- Social Inflation, fee-shifting statutes, lack of granting dispositive motions, sophisticated Plaintiff's bar are the culprit
- Out of state employers being out of compliance of law

Clarity on EEOC Impact

EEOC National Enforcement Plan – June 6, 2026

- National origin discrimination against Americans
- Eliminating all race discrimination including against “majority” employees and applicants
- Religious accommodations
- Vulnerable workers including low-wage workers and individuals with limited literacy or education
- Deemphasis on disparate impact claims (EO 14281) but still risk
- DEI-related employment practices
- No discussion on gender identity or sexual orientation

Clarity on EEOC Impact

What restructuring and shifting enforcement priorities mean for charge volume and litigation risk

- Potential increase in risk in
 - “Reverse” national origin/race discrimination claims
 - Religious discrimination claims
 - More emphasis on systematic/direct discrimination
 - Disability discrimination
 - Retaliation
 - Risk remains for other types of discrimination

Clarity on EEOC Impact

Actual Impact

- Some increase in activity with larger insureds
 - DOJ focused on publicly traded companies; nonprofits with over \$500M in assets; universities with endowments of over \$1B
 - Recent major technology company settled with DOJ \$17M re: DEI practices
- Geography matters
 - Non-metro jurisdictions may see more claims
 - Metro jurisdictions may see a few, but jury appeal is not there
 - Interplay between state and federal laws dictate volume
- Will AI impact volume of claims given EEOC mandate?

Perspective on D&O Claims – Public

Public Company

- Regulation
 - SEC enforcement
 - Priorities
- Overall Exposure
 - Securities litigation remains elevated
 - Severity remains a central concern.
- Sectors that have Benefitted
 - Energy
 - Traditional Industrials
 - Crypto

Perspective on D&O Claims – Private

Private Company

- Bankruptcies
 - Trustee actions
 - Creditor suits
 - Investor disputes
- Administration's priorities
 - Rollback of DEI initiatives
 - More employer-friendly federal posture
- FCA Claims
 - Big picture
 - FCA recoveries
 - Core takeaway
 - Industries affected/Core enforcement
 - Healthcare
 - Government contracting/procurement
 - Trade, tariffs and customs
 - Cybersecurity compliance
 - Policy-driven enforcement

Guidance on Underwriting & Pricing

- Regulatory Pressures and Underwriting Adjustments
- Appetite Changes
 - Company Type
 - Industry/Class
- Retentions & Terms
- Competitive environment despite increasing exposures

Practical Claims Strategy Considerations

- Don't play defense, play offense with trial theme and good story
- Make the case small to encourage reasonable resolution
- Learn your opponent (jury verdicts)
- Immediately learn if bad facts and exposure
- Jurisdictional defenses (removal, venue)
- Strategic discovery (informal discovery conferences, video)
- Offers of judgment
- Policy limit demands – stay in front of them
- Bifurcate punitive damages, strategic MILs

Remember This

Key Takeaways

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Thank you!