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In Employment Practices Liability (EPL) circles, the past year began with a new U.S. president inspiring fear that new legislation would adversely impact employers. While a number of legislative changes have taken place that may confirm some of these fears, so far this shift has been offset by the fact that the judges hearing EPL cases haven't changed. This balancing act can be expected to continue into 2010.

- EPL claims continue to increase: Willis experienced a 22% year-over-year increase in reported EPL matters.
- Employers still enjoy a judiciary that hasn't yet caught up with the executive branch in terms of higher standards for employers.
- The pricing of EPL insurance is expected to remain flat in the coming year, despite of the still faltering economy and its impact on the filing of EPL claims.

CAPACITY AND PLAYERS

As in the marketplace for Fiduciary Liability, the EPL carrier lineup matches that for Directors & Officers Liability (D&O). This is a natural outgrowth of EPL's history as an insurance product originally spun off from D&O for public companies and the fact that for private companies and nonprofit organizations, the two coverages are sold together (or as one product). But unlike both Fiduciary Liability and D&O, EPL is purchased largely to protect the company itself rather than executives and trustees. This means that some of the factors that go into purchasing these two more visible products often do not come into play when considering EPL insurance.

Accounts that may be challenging to place include financial institutions, companies in the real estate sector, retail business and financially troubled companies. Very large global companies have their own challenge in that until recently there were few U.S. domestic markets that entertained Fortune 250 firms on a lead or primary basis. Over the past year, which has been fairly tumultuous for Executive Risks markets, more leaders stepped forward, often with aggressive pricing. The worrisome news for some is that this disruptive pricing may be difficult if not impossible to renew with these same markets.



PRICING

When it comes to private company and nonprofit organizations, where D&O and EPL are sold together, it is largely the EPL risk that dictates the combined premium. For public companies, where these insurance contracts are sold separately, even if negotiated in tandem, EPL is the smaller ticket item for many insurers. As a result, they are willing to be more competitive in EPL – whether pricing the two as side-by-side coverages or completely separately. This is extremely good news for buyers.

TERMS AND CONDITIONS

Many buyers focus more on pricing than on terms and conditions, which can have a dramatic and sometimes negative impact on claims and claim handling. This may also explain why coverage clarifications and expansions are slower to migrate to this coverage than in the world of D&O.

Desired accounts should be able to negotiate a highly competitive price and favorable terms. These buyers – those who are not in high-risk categories and demonstrate best-in-class risk mitigation – may be able to have their cake *and* eat it, too.

CONTACT

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