

## Resolving EPL Coverage Disputes: Common Issues and COVID-19 Claims

Understanding EPL Coverage Triggers, Application Errors, Non-Monetary Claims,  
and Likely Covid-19 Issues

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WEDNESDAY, JUNE 3, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Today's faculty features:

Philip (Phil) Graham, Shareholder, **Sandberg Phoenix & von Gontard**, St. Louis

Christopher J. Tellner, Partner, **Kaufman Dolowich & Voluck**, Philadelphia

Britton D. Weimer, Founding Partner, **Weimer & Weeding**, Bloomington, Minn.

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The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 1.**

**Prac. Guide Def. EPL Claims Appendix 1B**

American Bar Association | 3rd Edition 2013

The Practitioner's Guide to Defense of EPL Claims  
Amy Wilson

Catherine Lacho<sup>al</sup>

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**Chapter 1: Employment Practices Liability Insurance**

Appendix 1B: Application

Executive Risk Indemnity Inc.	<i>Administrative Offices/Mailing</i>
Home Office	82 Hopmeadow
Wilmington, Delaware 19808	Simsbury, Connecticut 06070-7683

**APPLICATION FOR ABA EMPLOYERS EDGE<sup>SM</sup>**

**AN EMPLOYMENT PRACTICES LIABILITY**

**AMERICAN BAR ASSOCIATION**

**INSURANCE POLICY FOR LAW FIRMS**

**ENDORSED BY THE AMERICAN BAR  
ASSOCIATION**

**NOTICE: THE POLICY FOR WHICH APPLICATION IS MADE APPLIES, SUBJECT TO ITS TERMS, ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD" OR, IF PURCHASED, ANY EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED BY "DEFENSE EXPENSES," AND "DEFENSE EXPENSES" WILL BE APPLIED AGAINST THE RETENTION. THE UNDERWRITER WILL HAVE NO DUTY TO DEFEND ANY "CLAIM." PLEASE**

**READ THE ENTIRE APPLICATION CAREFULLY BEFORE SIGNING.**

**1. GENERAL INFORMATION**

A. **Applicant's name:** \_\_\_\_\_

**Applicant's address:** \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

B. Date of organization: \_\_\_\_\_

C. List all locations or branch offices by city and state (include approximate number of employees at each location). Please use a separate addendum if necessary.

**Locations or Branch Offices** **Approximate Number of Employees**

_____	_____
-	
_____	_____
-	
_____	_____
-	
_____	_____
-	

D. List prior employment practices liability insurance for the past three (3) years (either stand-alone policies or supplemental coverage provided under some other type of insurance). Please use a separate addendum if necessary.

<b>Period</b>	<b>Insurer</b>	<b>Limit</b>	<b>Retention</b>	<b>Coinsurance</b>	<b>Premium</b>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

**E. MISSOURI APPLICANTS/AGENTS - DO NOT ANSWER THIS QUESTION.**

Has a previous insurer ever canceled or non-renewed the **Applicant** for employment practices liability insurance (either on a stand-alone basis or as supplemental coverage provided under some other type of insurance)?  Yes  No

If “Yes,” provide details of the circumstances of cancellation or non-renewal.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

F. Desired coverage: Limit of liability: \_\_\_\_\_ Retention: \_\_\_\_\_

**2. EMPLOYEES**

A. Current number of

Partners: \_\_\_\_\_

All other attorneys: \_\_\_\_\_

All other full-time employees: \_\_\_\_\_

Part-time employees (including seasonal and temporary): \_\_\_\_\_

B. What was the annual employee (including all attorneys) turnover rate for the last four (4) years?

19 \_\_\_\_: \_\_\_\_ %                      19 \_\_\_\_: \_\_\_\_ %                      19 \_\_\_\_: \_\_\_\_ %                      19 \_\_\_\_: \_\_\_\_ %

C. How many involuntary terminations have occurred in the past two (2) years?

Employees: \_\_\_\_\_ All attorneys: \_\_\_\_\_

D. Percentage of employees (including all attorneys) with salaries (including bonuses):

Less than \$50,000: \_\_\_\_\_ %

\$50,000 - \$100,000: \_\_\_\_\_ %

\$100,000 - \$250,000: \_\_\_\_\_ %

Greater than \$250,000: \_\_\_\_\_ %

E. Current number of dedicated independent contractors (i.e., independent contractors working exclusively for the **Applicant** on the **Applicant's** premises): \_\_\_\_\_

F. Please describe the nature of the work done by the independent contractors included above. Please use a separate addendum if necessary. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

### 3. LOSS HISTORY

A. Please provide a listing of all employment practices claims by employees or applicants for employment over the past three (3) years, including information regarding the type of claim, the parties involved, and any settlement or final determination of the claim. If none, so state. Please use a separate addendum if necessary.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Please provide a listing of any facts or circumstances which may result in employment practices claims being made against the **Applicant**. If none, so state. Please use a separate addendum if necessary.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Has the **Applicant** ever been involved in any grievance or administrative hearing before the following agencies or under any of the following Acts:

1. National Labor Relations Board  Yes  No

- 2. Equal Employment Opportunity Commission  Yes  No
  
- 3. Civil Rights Act of 1991  Yes  No
  
- 4. Age Discrimination in Employment Act  Yes  No
  
- 5. Americans With Disabilities Act  Yes  No
  
- 6. Any other Governmental Agency or Act  Yes  No

If “Yes,” please provide details. Please use a separate addendum if necessary.

- D. Does the **Applicant** utilize any form of alternative dispute resolution in connection with employment practices claims?  Yes  No

If “Yes,” please describe on a separate addendum.

E. Please provide a listing of all third party lawsuits (i.e., suits by entities or individuals who are not employees nor applicants for employment) for discrimination, sexual harassment and related claims over the past three (3) years, including information regarding the type of claim, the parties involved, and any settlement or final determination of the lawsuit. If none, so state. Please use a separate addendum if necessary. \_\_\_\_\_

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F. Please provide a listing of any facts or circumstances which may result in claims of the type described in 3. E. above being brought against the **Applicant**. If none, so state. Please use a separate addendum if necessary.

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Without prejudice to any other rights and remedies of the Underwriter, any claim based on or directly or indirectly arising out of or resulting from any claim, suit, circumstance, allegation, or contention required to be disclosed in response to Question 3. A., B., C., E., and F is excluded from the proposed insurance.

#### 4. HUMAN RESOURCES

A. Does the **Applicant** have a human resources department?  Yes  No

B. Provide the name of the head of this department and the total number of employees therein. Name: \_\_\_\_\_ Total number of employees: \_\_\_\_\_

C. How are human resources matters handled in branch offices? Please use a separate addendum if necessary.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Does the **Applicant** have written procedures in place with regard to the following:

1. Termination  Yes  No

2. Hiring  Yes  No

3. Discipline  Yes  No

E. Is there an employee handbook?  Yes  No

If “Yes”: 1. Is it distributed to all new employees (including all attorneys)?  Yes  No

2. Does it contain a comprehensive “employment at will” statement?  Yes  No

F. Is there a written procedure for handling employee complaints of harassment and/or discrimination?  Yes  No

G. Have anti-sexual harassment policies and procedures been implemented by the **Applicant**?  Yes  No

If “Yes,” has the **Applicant** informed employees that incidents of sexual harassment may be reported without fear of retaliation by the **Applicant**?

H. Does the **Applicant's** sexual harassment and/or discrimination policy encompass third parties in addition to employees?  Yes  No

I. Does the **Applicant** use any tests to screen applicants either for hire or promotion?  Yes  No

If "Yes," please provide details. Please use a separate addendum if necessary.

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J. Are all prospective employees required to complete an employment application prior to hire?  Yes  No

K. Is there a formal orientation program for new employees?  Yes  No

L. Are regular, written performance evaluations completed for and provided to all employees?  Yes  No

M. Does the **Applicant** anticipate any branch/location closings, consolidations, or layoffs?  Yes  No

If "Yes," please provide details including the year, anticipated number of layoffs, and the circumstances surrounding those layoffs. Please use a separate addendum if necessary.

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- N. Does the **Applicant** have a formal out-placement program which assists former employees in obtaining alternate employment?  Yes  No
- O. Does the **Applicant** require terminations to be reviewed by outside counsel in addition to its human resources department?  Yes  No
- P. Is there a policy concerning assistance provided to employees with AIDS or any other life-threatening or communicable diseases?  Yes  No
- Q. Does the **Applicant** provide employees with client relations training designed to avoid third party discrimination and harassment claims?  Yes  No

## 5. FIRM HISTORY

If the **Applicant** answers “Yes” to any of the following questions, please provide further details on a separate addendum.

- A. Has the **Applicant** acquired any other partnerships, firms, or limited liability companies in the last ten (10) years?  Yes  No
- B. If “Yes” to question 5. A., did the acquisition include the assumption of liabilities?  Yes  No
- C. With respect to any acquisitions, were any employees, partners, or other attorneys terminated, or does the **Applicant** plan in the next eighteen (18) months to terminate any employees, partners, or other attorneys?  Yes  No

If “Yes,” please explain on a separate addendum.

**6. PLEASE PROVIDE COPIES OF THE FOLLOWING:**

- A. Firm Financial Information Supplement (Attachment)
- B. Employee handbook
- C. Procedure for handling employee complaints of discrimination or sexual harassment

**NOTICE TO APPLICANT --PLEASE READ CAREFULLY.**

**FOR THE PURPOSES OF THIS APPLICATION, THE UNDERSIGNED AUTHORIZED AGENT OF THE PERSON(S) AND ENTITY(IES) PROPOSED FOR THIS INSURANCE DECLARES THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF, AFTER REASONABLE INQUIRY, THE STATEMENTS HEREIN ARE TRUE AND COMPLETE. THE UNDERWRITER IS AUTHORIZED TO MAKE INQUIRY IN CONNECTION WITH THIS APPLICATION. SIGNING THIS APPLICATION DOES NOT BIND THE UNDERWRITER TO COMPLETE, OR THE APPLICANT TO PURCHASE, THE INSURANCE.**

**THE INFORMATION CONTAINED IN AND SUBMITTED WITH THIS APPLICATION IS ON FILE WITH THE UNDERWRITER AND ALONG WITH THE APPLICATION IS CONSIDERED PHYSICALLY ATTACHED TO THE POLICY AND WILL BECOME A PART OF IT. THE UNDERWRITER WILL HAVE RELIED UPON THIS APPLICATION AND ATTACHMENTS IN ISSUING ANY POLICY. THE APPLICATION WILL BECOME A PART OF SUCH POLICY IF ISSUED.**

**IF THE INFORMATION IN THIS APPLICATION MATERIALLY CHANGES BETWEEN THE DATE OF THIS APPLICATION AND THE POLICY EFFECTIVE DATE, THE APPLICANT WILL NOTIFY THE UNDERWRITER, WHO MAY MODIFY OR WITHDRAW ANY OUTSTANDING QUOTATION.**

**THE UNDERSIGNED DECLARES THAT THE PERSON(S) AND ENTITY(IES) PROPOSED FOR THIS INSURANCE UNDERSTAND THAT**

**(I) THE POLICY SHALL APPLY ONLY TO “CLAIMS” MADE (OR DEEMED MADE) TO THE UNDERWRITER DURING THE “POLICY PERIOD” OR TO “CLAIMS” MADE TO THE UNDERWRITER DURING ANY APPLICABLE “EXTENDED REPORTING PERIOD”;**

**(II) THE LIMIT OF LIABILITY CONTAINED IN THE POLICY SHALL BE REDUCED, AND MAY BE COMPLETELY EXHAUSTED, BY “DEFENSE EXPENSES” AND, IN SUCH EVENT, THE UNDERWRITER SHALL NOT BE LIABLE FOR “DEFENSE EXPENSES” OR FOR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT TO THE EXTENT THAT SUCH COST OR LIMIT EXCEEDS THE LIMIT OF LIABILITY IN THE POLICY; AND**

**(III) “DEFENSE EXPENSES” THAT ARE INCURRED SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.**

**NOTICE TO ARKANSAS, MINNESOTA, AND OHIO APPLICANTS: ANY PERSON WHO, WITH INTENT TO DEFRAUD OR KNOWING THAT HE/SHE IS FACILITATING A FRAUD AGAINST AN INSURER, SUBMITS AN APPLICATION OR FILES A CLAIM CONTAINING A FALSE OR DECEPTIVE STATEMENT IS GUILTY OF INSURANCE FRAUD, WHICH IS A CRIME.**

**NOTICE TO COLORADO APPLICANTS: IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICY HOLDER OR CLAIMANT FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE POLICY HOLDER OR CLAIMANT WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.**

**NOTICE TO DISTRICT OF COLUMBIA, MAINE AND VIRGINIA APPLICANTS: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, OR A DENIAL OF INSURANCE BENEFITS.**

**NOTICE TO FLORIDA APPLICANTS: ANY PERSON WHO, KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD, OR DECEIVE ANY EMPLOYER OR EMPLOYEE, INSURANCE COMPANY, OR SELF-INSURED PROGRAM, FILES A STATEMENT OF CLAIM OR AN APPLICATION CONTAINING ANY FALSE OR MISLEADING INFORMATION IS GUILTY OF A FELONY OF THE THIRD DEGREE.**

**NOTICE TO KENTUCKY APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.**

**NOTICE TO LOUISIANA AND NEW MEXICO APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.**

**NOTICE TO MARYLAND APPLICANTS: ANY PERSON WHO, WITH INTENT TO DEFRAUD OR KNOWING THAT HE/SHE IS FACILITATING A FRAUD AGAINST AN INSURER, SUBMITS AN APPLICATION OR FILES A CLAIM CONTAINING A FALSE OR DECEPTIVE STATEMENT MAY BE GUILTY OF INSURANCE FRAUD.**

**NOTICE TO NEW JERSEY APPLICANTS: ANY PERSON WHO INCLUDES ANY FALSE OR MISLEADING INFORMATION ON AN APPLICATION FOR AN INSURANCE POLICY IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.**

**NOTICE TO NEW YORK APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.**

**NOTICE TO OKLAHOMA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD OR DECEIVE ANY INSURER, MAKES ANY CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE OR MISLEADING INFORMATION IS GUILTY OF A FELONY.**

**NOTICE TO OREGON AND TEXAS APPLICANTS: ANY PERSON WHO MAKES AN INTENTIONAL MISSTATEMENT THAT IS MATERIAL TO THE RISK MAY BE FOUND GUILTY OF INSURANCE FRAUD BY A COURT OF LAW.**

**NOTICE TO PENNSYLVANIA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.**

APPLICANT		
BY <i>(Principal, Partner, or Shareholder)</i>	TITLE	DATE

NOTE: This Application is signed by the undersigned authorized agent of the **Applicant** on behalf of the **Applicant** and all of its partners, owners, shareholders, officers, and employees.

**REQUIRED INFORMATION**

PRODUCED BY <i>(Insurance Agent)</i>	
Please print and sign name	
_____	
_____	
INSURANCE AGENCY	
INSURANCE AGENCY TAXPAYER ID OR SOCIAL SECURITY NO.	AGENT LICENSE NO.
ADDRESS <i>(No., Street, City, State, and ZIP)</i>	
EMAIL ADDRESS	

SUBMITTED BY ( <i>Insurance Agency</i> )	INSURANCE AGENCY TAXPAYER ID OR SOCIAL SECURITY NO.	AGENT LICENSE NO.
ADDRESS ( <i>No., Street, City, State, and ZIP</i> )		

**EXECUTIVE RISK INDEMNITY INC. APPLICATION FOR ABA EMPLOYERS EDGE<sup>SM</sup> AN EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY FOR LAW FIRMS ENDORSED BY THE AMERICAN BAR ASSOCIATION FIRM FINANCIAL INFORMATION SUPPLEMENT**

Name of **Applicant**: \_\_\_\_\_

This supplement is part of the Application for ABA Employers Edge<sup>SM</sup>, An Employment Practices Liability Insurance Policy for Law Firms.

Please supply the following information and the source financial documents listed below. For items 1, 2, and 3, supply information for your latest completed fiscal year and the prior two fiscal years. For items 4, 5, and 6, please supply the amount at year end.

**Latest Fiscal Year** (ending \_\_\_ / \_\_\_ / \_\_\_)      **1st Prior Fiscal Year** (ending \_\_\_ / \_\_\_ / \_\_\_)      **2nd Prior Fiscal Year** (ending \_\_\_ / \_\_\_ / \_\_\_)

**1. Gross Revenues:**

Cash receipts from professional services, excluding expense reimbursements.

**2. Net Income:**

Total net income for distribution to active equity partners or shareholders.

**3. Total Debt (Net present value):**

The sum of long- and short-term debt to all creditors. Please indicate the discount rate used to compute net present value. (If net present value estimate is not available, list each obligation and its maturity date.)

**4. Lease Obligations (Net present value):**

Please include all leases -- e.g., for real estate, furnishings, office equipment, etc. Please indicate the discount rate used to compute net present value. (If net present value estimate is not available, list all leases and show payment due by year for each.)

**5. Obligations to Former Partners/Shareholders (Net present value):**

Total of all payments due to retired partners/shareholders or former partners/shareholders, for whatever reasons. Please indicate the discount rate used to compute net present value. (If net present value estimate is not available, please list obligations per year for each individual.)

**6. Partner or Shareholder Equity:**

Total partner or shareholder equity.

Please provide latest fiscal year financial statements (income statement and balance sheet), audited if available, with this supplement.

**I understand that information submitted herein becomes part of the Applicant's Application for ABA Employers Edge<sup>SM</sup>, An Employment Practices Liability Insurance Policy for Law Firms, and is subject to all of the representations and conditions set forth therein.**

\_\_\_\_\_

Authorized Signature of **Applicant** (Principal, Partner, or Shareholder)      Date

\_\_\_\_\_

Print Name      Date

Footnotes

<sup>a1</sup> The editor and authors would like to thank Joseph P. Monteleone for his significant contributions to chapter 1 in the second edition of this book.