Pricing Employment Practices Liability Exposures

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PRICING EMPLOYMENT PRACTICES LIABILITY EXPOSURES

ABSTRACT

Over the past ten years the insurance industry has developed and introduced an Employment Practices Liability (EPL) policy to cover employers against allegations of wrongful employment practices (discrimination, sexual harassment or wrongful termination). The demand for EPL coverage has increased dramatically in recent years due to:

- The significant rise in the number of claims alleging discrimination, sexual harassment or wrongful termination against employers; and

- The employment practices exclusion added to many mainstream insurance policies, clarifying some insurance carriers position that it was never their intent to cover EPL.

This paper is divided into seven sections. The first section is an introduction and briefly summarizes countrywide EPL claims statistics and trends based on data published by the Equal Employment Opportunity Commission (EEOC). The next section defines wrongful employment practices. Insurance coverage issues surrounding wrongful employment actions under mainstream insurance policies is discussed in the third section. The fourth section describes the EPL policy and the obstacles that actuaries face in pricing the product.

The current rating methodology for EPL, as contained in publicly available rate filings is discussed in the next section. The sixth section describes a new pricing method which we developed to price the EPL policy based on data available from the EEOC. We also describe

some of the various EEOC databases and publications. The final section provides our conclusion.

BIOGRAPHY

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Chad is with the Milwaukee office of Milliman & Robertson, Inc. He joined the firm in 1993 after receiving his bachelors degree in actuarial science from the University of Wisconsin - Madison. His area of expertise is property and casualty insurance, particularly ratemaking, loss reserve analysis, and financial planning. Chad has assisted in the pricing of EPL coverage both for stand alone policies as well as in the form of an endorsement to existing policies.

ACKNOWLEDGMENTS

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PRICING EMPLOYMENT PRACTICES LIABILITY EXPOSURES

I. INTRODUCTION

Over the past ten years the insurance industry has developed and introduced an Employment Practices Liability (EPL) policy to cover employers against allegations of wrongful employment practices, such as discrimination, sexual harassment or wrongful termination. The EPL policy typically provides coverage to the corporation, directors and officers and employees for wrongful employment practices. The policies in general also include a duty to defend the insured.

The demand for EPL coverage has increased dramatically in recent years due to two factors:

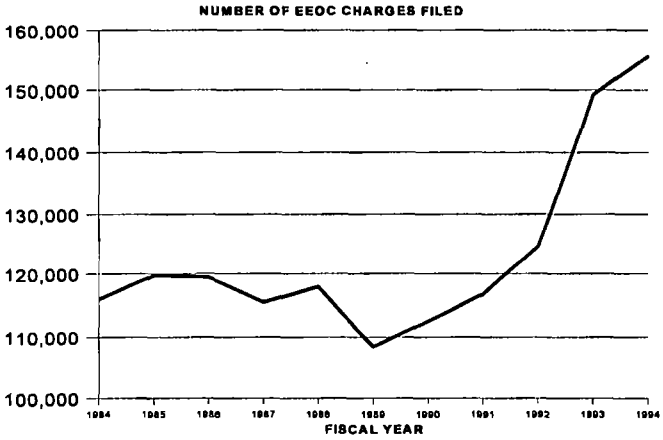
- The significant rise in the number of EPL claims (we believe this is in part due to the passage of the Civil Rights Act of 1991 which allows for increased recovery of damages including punitive damages); and

- The employment practices exclusion added to many mainstream insurance policies.

Thus employers today face more exposure and potentially less coverage, unless they purchase a specific stand alone EPL policy or an EPL endorsement which is usually attached to a D&O policy.

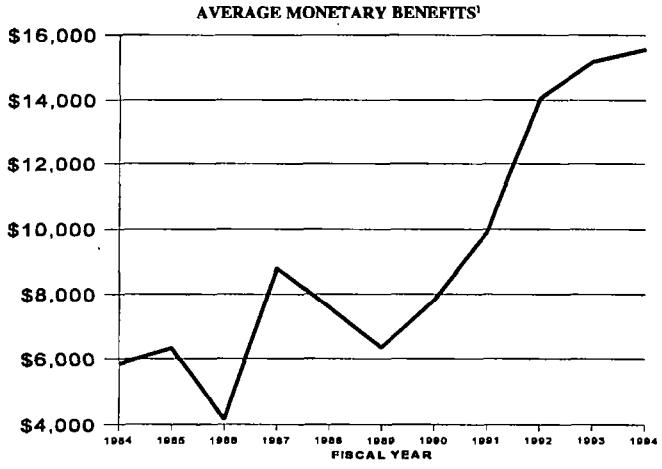
The number of charges filed with the Equal Employment Opportunity Commission (EEOC) alleging wrongful employment practices against employers continues to rise every year. Almost all employment practices claims begin with a charge filed with the EEOC.

The following graph displays the number of charges (alleging wrongful employment practices) filed with the EEOC from fiscal year 1984 to fiscal year 1994.



As the above graph displays, the number of claims filed remained relatively constant from 1984 to 1991; however, since 1991 the number of claims filed has increased at an annual rate of approximately 10%.

Additionally, the average monetary benefit per person has increased dramatically in recent years. The following graph displays the average monetary benefit by fiscal year from the EEOC Enforcement Statistics:



The growth in the number of claims and average awards can be attributed to many factors including greater public awareness resulting from the Clarence Thomas hearings, increased media attention as well as the increase in corporate consolidations and downsizings. Additionally, significant expansion of civil rights legislation (Civil Rights Act of 1991) and employment law both on a state and national level along with several large jury awards in cases involving sexual harassment has increased employment related claims. For example, in the case of Weeks vs. Baker & McKenzie, a jury awarded over $7.1 million in punitive damages to a legal secretary, Rena Weeks, for her claim of sexual harassment against the law firm of Baker & McKenzie, even though Weeks was only awarded $50,000 in compensatory damages.

[1]Including class action claims and punitive damage awards, additionally class action awards are allocated to each individual plaintiff.

II. DEFINITION OF WRONGFUL EMPLOYMENT PRACTICES

Most EPL policies provide coverage for the following three types of claims:

- Discrimination
- Wrongful termination and
- Sexual harassment.

These acts are typically currently excluded from other insurance policies (with the exception of coverage for Directors and Officers for certain actions under a D&O policy). The applicability of other insurance policies responding to wrongful employment practices is discussed in the next section.

Discrimination encompasses acts such as failure to hire, failure to promote, demotion, discrimination, and discriminatory slurs or comments. Discrimination claims are usually based on one or more of the following factors: race, color, creed, natural origin, marital status, medical condition, sexual orientation, religion, age, gender, physical and/or mental impairments or pregnancy.

Discrimination is defined in several federal statutes and these statutes form the basis for discrimination claims. The major applicable statutes include:

- Title VII of the Civil Rights Act of 1964;
- Age Discrimination in Employment Act;
- Americans with Disabilities Act;

- Civil Rights Act of 1991;
- Equal Pay Act; and
- Vocational Rehabilitation Act of 1973.

Basically all of these acts prohibit different treatment (e.g., pay, promotion, hiring) for different classes of employees. The trend has been to expand the scope of the law and the penalties associated with infractions.

For example, the Age Discrimination in Employment Act added protection against age discrimination for persons as young as age 40. Further, the 1991 Civil Rights Act expanded the remedies available under other statutes (which in general were limited to back pay, reinstatement and attorney's fees) to include compensatory and punitive damages (with some limits) as well as jury trials.

The second EPL coverage trigger, wrongful termination, encompasses the act of terminating an employee in a manner which is against the law. Most wrongful termination claims allege a breach of an express or implied contract, a breach of an implied covenant of good faith and fair dealing, or a violation of some public policy (e.g., retaliatory discharge due to the employee filing a workers' compensation claim).

The third coverage trigger, sexual harassment, includes unwelcome sexual advances, requests for sexual favors, or verbal, visual, and/or physical conduct of a sexual nature which is made a condition of employment. In addition, harassment allegations may include any conduct that

creates a work environment that interferes with job performance or creates an intimidating, hostile or offensive working environment.

Sexual harassment claims have more than doubled since 1991, the year of the Clarence Thomas hearings. Many labor law attorneys believe that the number of lawsuits filed will continue to increase.

III. INSURANCE COVERAGE ISSUES

It appears that standard insurance policies were not designed to cover wrongful employment practices. As a result, coverage has been found in some instances for EPL claims, but not consistently.

Insurance carriers, in general, did not perceive employment practices liability claims to present a significant exposure until the mid 1980's. Prior to this time, most policies did not address the EPL exposures, either through specific coverage provisions or specific exclusions. Additionally, it was many insurance carriers' belief that harassment and discrimination were intentional acts and therefore not in the public's best interest to insure. However, while the insurance industry was reluctant to acknowledge coverage, employers could sometimes obtain at least defense coverage under either their commercial general liability, workers' compensation, directors & officers or umbrella policies.

Although several commercial insurance policies potentially can be used to cover a claim

alleging wrongful employment practices, the ability of most of these products to respond to EPL claims is limited by contract wording and the increased use of employment practices related exclusions.

Commercial General Liability

Standard Commercial General Liability (CGL) policies respond to claims which result in bodily injury or property damage, conditions rarely present in employment practices suits. However, some CGL policies contain an endorsement covering personal injury. Personal injury is commonly defined to include bodily injury, mental injury, shock, sickness, disease, disability, invasion of privacy, false imprisonment, emotional distress, mental anguish, libel, slander and defamation. These types of claims are often found in employment practices suits. Some courts have evoked coverage for EPL under the personal injury section of the endorsed CGL policy.

The CGL policy also provides a duty to defend which is broader than the duty to indemnify. Therefore, the insurer may be compelled to provide a defense in some cases where the duty to indemnify is later found not to exist. This factor is significant as many EPL claims involve substantial legal costs even in cases where the employer is found not guilty of wrongful employment practices. Furthermore under Title VII, if the plaintiff prevails, the defendant may be required to pay part or all of the plaintiff's legal costs.

Because of the above factors, many insurers now routinely add an employment practices related exclusion to their CGL policies, which forces insureds to seek EPL coverage under a different policy.

Workers' Compensation

The employers' liability section of a workers' compensation policy includes coverage for claims resulting from an employee's occupational injury or disease which is not within the scope of the workers' compensation law. As coverage is restricted to claims involving bodily injury by accident or disease, coverage for EPL is rarely found under a workers' compensation policy. Additionally, a revision in 1992 to many workers' compensation forms contained an EPL exclusion to the employer's liability section.

Directors and Officers (D&O) Liability

The D&O policy appears to be the most likely insurance product, other than EPL, in which a policyholder may find coverage. In general, D&O policies provide coverage for loss in connection with a claim against directors and officers for wrongful acts in such capacity. However, the standard D&O form contains provisions excluding coverage for many employment related claims. D&O policies cover only the directors and officers of a firm, while many EPL suits involve managers, supervisors and other employees who would not be covered under the D&O policy. Also, there is usually no duty to defend under a D&O policy rather, covered loss is determined at the end of the case. In addition, many D&O policies do not provide coverage for the entity (corporation) and have an "insured versus insured" exclusion. Thus, the following situations may not trigger coverage:

- A suit naming the business as a defendant; or
- A director or officer filing a suit against another director or officer.

Umbrella Liability

Umbrella liability policies provide broad coverage for acts of libel, slander, defamation, and false arrest, which are the types of claims often found in wrongful employment practices suits. However, umbrella policies increasingly exclude employment related acts as insurers are making it clear that it wasn't their intention to include coverage for wrongful employment practices. Thus, coverage under these policy forms is no more certain than under the other forms described above.

IV. EMPLOYMENT PRACTICES LIABILITY (EPL)

The growth in the number of EPL claims and the coverage gaps discussed above led to the development of a relatively new insurance policy or endorsement, EPL. The EPL policy is designed to provide coverage to the entity, its employees (with some limited exceptions) and its directors and officers for claims of sexual harassment, discrimination, and wrongful discharge. EPL policies are generally written on a claims-made basis.

Actuaries and underwriters face many obstacles in pricing these relatively new EPL products including, but not limited to, the following:

- Historical data may be sparse or non-existent;
- Current and future frequency and severity trends are difficult to estimate; and
- Few publicly available rate filings exist.

Many companies have not historically separately identified EPL claims in their internal databases and even the ones that have identified such claims usually do not have a sufficient number to produce credible rate indications. Additionally, many firms which historically have not written the coverage are now interested in offering this coverage, due to the increased demand for the coverage from their insureds.

As discussed previously, recent claim information from the EEOC indicates that the number of charges filed annually has been increasing at 10%. Furthermore, it appears that the average cost per claim (severity) is also increasing between 5% and 10% annually. Another factor to consider in projecting future year's claim costs is the expansion of certain statutes and increased jury awareness resulting in the trend towards larger jury awards. Therefore, with a double digit pure premium trend and recent factors leading one to believe that the trend will continue to increase, the uncertainty surrounding future projections is substantial.

The third factor hampering the development of credible rates is the lack of publicly available rate filings or industry data. Many insurance carriers write this product on an "excess and surplus" lines basis and therefore do not file rates with state insurance departments. Additionally, the rate filings that are available generally do not contain any significant loss experience.

V. CURRENT RATING METHODOLOGY

The most common variable upon which carriers determine the basic premium charge is the

size of the employer. Specifically, most carriers use the number of employees as the primary rating variable in developing the premium charge for EPL coverage. Furthermore, the marginal rates applied to each employee decrease as the number of employees increase. The following table provides an example of what an insurance company's EPL rating structure may look like:

Number of Employees	Rate per Employee[1]
First 50	$400
Next 100	200
Next 150	100
Each Above 500	50

[1] Hypothetical Example

Most carriers also impose a minimum premium amount either explicitly stated in dollars or by setting a minimum number of employees needed for coverage. The decreasing rate by employee size is based on the theory that larger employers have more effective human resource departments. The human resource departments, and in particular the existence of an internal grievance procedure, reduces the exposure because claims are handled "in-house" before the potential plaintiff hires an attorney and files a lawsuit. This theory has been confirmed in discussions with labor law attorneys.

In addition to basing the premium charge on the number of employees, most carriers also allow the insured to select among various:

- Limits of coverage;
- Deductible amounts; and
- Coinsurance percentages.

Limits of Coverage

The limits of coverage offered by insurance carriers varies from the basic limits option ($25,000/$25,000) up to $25,000,000/$25,000,000. In addition, it appears that certain carriers target large employers (500 plus employees) whereas other carriers target smaller sized employers (less than 200 employees).

Perhaps the most important distinction made with respect to limits of coverage is that in all the filings we reviewed, defense costs were included within the limits of coverage and thus the costs associated with defending a claim erode the limit of coverage afforded to the insured. This is an important consideration given that it has been estimated that approximately one-third of the total costs associated with EPL coverage can be attributed to the defense of claims.

Deductible Options

Most EPL carriers require that insureds participate in their loss experience via the use of deductibles. The size of the deductibles generally offered ranges from as low as $2,500 per claim to as much as $50,000 or $100,000 per claim. In addition most deductible options apply to defense costs as well as indemnity costs. Thus, the insurance company is not providing any "first dollar" defense coverage which is important given the significance of defense costs.

Coinsurance Options

The coinsurance provision is another way for the insured to reduce the basic premium charge as well as satisfy the insurance company's desire to have the insured participate financially in its loss experience. The coinsurance percentages again vary depending on the size of the insurance company's target market and ranged from 0.0% to 25.0%.

Underwriting Criteria

When underwriting an EPL policy the insurance company may take into account more than just the employer's size and loss history. Because the coverage is very broad, many other variables are used in the underwriting process[2]:

- Financial strength;
- Location of Business;
- Corporate Downsizing plans for the future;
- Are internal dispute resolution procedures in place?;
- Are educational seminars/handbooks given to new employees?;
- Is an Employee Handbook in place which clearly defines:
  - Employment At Will contract and not Guaranteed Employment;
  - What constitutes sexual harassment;
  - Procedures to follow to file an EPL complaint;
- Has management been educated on company procedures with respect to:

[2]Based on a presentation entitled "Wrongful Employment Practices Claims: Are we covered for this?" by Muzzette Hill and Paul Matusek.

- Hiring/Firing; and
- Promotion/Demotion.

In addition to the employer specific criteria depicted above, it is generally believed that certain industries also pose a greater EPL exposure. The industries that may pose a greater EPL exposure include:

- Governmental Entities;
- Law Firms;
- Health Care Delivery Entities;
- Educational Entities;
- Banking; and
- Other Industries with highly compensated employees.

The next section will focus on a new approach which we have developed to rate the EPL exposure. Our approach supplements the current approach with data and experience published by the EEOC to determine rates.

VI. PRICING EPL USING EEOC DATA

We have developed a new approach to price the EPL product based on data available from the EEOC. The rates derived from our approach can then be refined based on discussions with labor law attorneys, underwriters, and comparisons with rate filings of other companies. We

believe that it is necessary to utilize an outside data source to price EPL due to the lack of historical insurance company data.

The EEOC collects information on charges of discrimination filed by individuals in all the EEOC field offices and in comparable state agencies. Before filing an EPL-related lawsuit (e.g., under Title VII, Americans with Disabilities Act, Age Discrimination in Employment Act) an employee must first file a discrimination charge with the EEOC or comparable state agency (note the EEOC also collects the state agency data). In some cases, the EEOC will pursue the case against the employer, and in other cases the EEOC will issue a "right-to-sue" letter which aides the employee if he/she plans to file a lawsuit. Therefore, the EEOC collects claim count information on most EPL type charges. Notable exceptions would be charges handled under a union collective bargaining agreement (if less than 15 members) and some federal employees.

The EEOC in its Annual Report publishes total charges broken out by basis of discrimination (e.g., race, religion, sex, etc.) Furthermore, plaintiff attorneys often allege several charges in connection with each act of discrimination. For example, an individual may allege race, sex and age discrimination (for a total of three charges) even though there is actually only one claim filed. Therefore, the number of claims will be less than the number of charges. Because of this, the number of charges must be converted to the number of claims (as discussed later, the severity amounts are per claim).

For illustrative purposes, we will use statistics from Colorado and Illinois as an example. The following table displays charges by year for fiscal years 1991 - 1993 for each state:

Number of Discrimination Charges Filed With the EEOC[3]			
State	Fiscal Year		
	1991	1992	1993
Colorado	3,003	3,566	3,833
Illinois	8,698	9,550	9,782

In order to derive a frequency estimate (number of claims per employee), we must:

- Convert the number of charges to individual claims; and

- Divide the number of claims by the exposure unit (e.g., number of individuals employed in the state).

For the first adjustment, we compared the number of countrywide charges from the EEOC Annual Report to the number of receipts (claims) from the EEOC Enforcement Statistics Reports. The number of claims relative to the number of charges has averaged about 80% for fiscal years 1991-1993.

At this time we were only able to calculate this conversion ratio on a countrywide basis as the EEOC Enforcement Statistics Reports did not contain the available data on a state by state basis. To the extent this ratio varies by state our methodology currently ignores this impact.

[3]Includes claims filed with state agencies.

The second adjustment involves estimating the statewide exposure (number of individuals employed in the state). From the Census Bureau we have population statistics by state. These population statistics can be adjusted to estimate the number of individuals employed (we estimated that 50% of the population is employed for illustrative purposes).[4]

The following table displays the estimated frequency figures for Colorado and Illinois.

Number of Discrimination Charges Per 1000 Employees[5]			
State	1991	1992	1993
Colorado	1.43	1.65	1.77
Illinois	1.21	1.31	1.34

When pricing 1996 policies, we also need to reflect the historical trend in frequency. The frequency in Colorado increased from 1.43 claims per 1,000 employees in 1991 to 1.77 in 1993 for an increase of roughly 11% per year. This compares to a countrywide trend of approximately 8% over the same two year period.

Comparable figures for Illinois imply an annual trend of 5%. If the analyst were to average the individual state's trend estimate with the countrywide trend estimate, a 9.5% frequency

[4]Using data published in the 1995 Statistical Abstract of the United States, 115th Edition, one can estimate the percent of the population employed on a state by state basis.

[5]It should be noted that we are pricing a claims-made policy. We have assumed that the employer would be notified at about the same time as the employee filed a charge with the EEOC. We have also assumed that all claims are reported in the year in which they occur.

trend would be applied in Colorado and a 6.5% frequency trend in Illinois. Thus from the above table, the average 1991-1993 frequency in Colorado of 1.62 is projected to increase to 2.32 for 1996. The 1991-1993 frequency of 1.29 in Illinois is projected to increase to 1.66.

The next statistic needed to derive pure premiums is the severity or average cost per claim. The EEOC General Counsel's Annual Report summarizes lawsuits handled by the various EEOC District Offices[6]. The attached exhibit 1 summarizes information from the fiscal year 1993 report for the Chicago District office. The information is broken out into:

- Suits filed by statute and issue (e.g., race, sex); and
- Suits resolved by statute and issue.

Additionally, for the suits resolved, the actual judgment amount is recorded. The Chicago District office resolved 26 lawsuits during fiscal year 1993 and recovered approximately $1,370,000 in monetary benefits for employees alleging employment discrimination.[7]

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[6]The EEOC collects and publishes actual verdicts (including the amount of the verdict) when EEOC attorneys prosecute the claim. However the vast majority of EPL claims settle prior to trial or without EEOC attorney involvement. Therefore EEOC will only have verdict information on a subset of all claims. Based on discussions with attorneys, we expect that the EEOC collected verdicts would represent, in general, the average to above average settlement in terms of amount of award (small claims or zero dollar verdicts would be under-represented). This phenomenon is somewhat offset by the fact that we are estimating severities from a closed claim database in an environment where the underlying claims population is growing (which would tend to understate the ultimate severity due to larger claims propensity to settle later than smaller claims).

[7]The 26 lawsuits resolved exclude 7 subpena enforcement actions. Also, the attached exhibit displays the fact that several issues are alleged per lawsuit. For example, on page 4 of Exhibit 1 in the first case under 2.Sex, one plaintiff alleged retaliation, failure to promote, and illegal

The following table displays the monetary verdicts for the 26 claims.

Suits Resolved By The Chicago District Office	
Claim Number	Amount of Award
1	$ 42,520
2	460,000
3	200,000
4	48,000
5	9,500
6	3,551
7	38,965
8	29,000
9	0
10	0
11	117,500
12	0
13	3,500
14	9,156
15	0
16	12,000
17	17,000
18	28,700
19	0
20	0
21	25,000
22	52,500

discharge.

Suits Resolved By The Chicago District Office	
Claim Number	Amount of Award
23	0
24	52,262
25	0
26	222,000
Total	$1,371,154

As can be seen from the above table, 8 of the 26 suits involved no monetary award against the defendant. However, as will be discussed later, the defendant most likely spent a considerable amount in legal fees to resolve the case. Also the distribution of actual awards by amount is rather wide with verdicts ranging between $3,500 and $460,000. For all EEOC offices in total the resolutions during fiscal year 1993 ranged between $100 and $20 million. The EEOC has 23 districts offices and resolved 427 suits in fiscal 1993 and 626 suits in fiscal 1992.

As mentioned previously, the lawsuits prosecuted and resolved by the EEOC represents a small percentage of all lawsuits. In most cases, lawsuits are prosecuted by the plaintiff through the use of independent legal counsel (not EEOC staff attorneys). However, the claims must generally first be filed with the EEOC (so these independently prosecuted claims are counted in the frequency projections).

Labor law attorneys believe that claims handled by EEOC would not be systematically biased (with the possible exception of an unrepresentative low number of claims which would close

without a payment). Therefore, the EEOC claim verdicts can be used to construct a claims severity distribution. However, several adjustments might be required before the distribution is constructed.

First, the individual claims must to be adjusted to a cost level expected to prevail for claims reported in 1996. For example, an EEOC claim which settled in 1993 but was reported in 1991 would be adjusted for 5 years of claims cost inflation trend. This adjustment is significant as total claim costs are recently increasing between 5% and 10% annually[8].

The EEOC individual claim awards contain both the date the lawsuit was resolved as well as the date the lawsuit was filed. When trending the awards, to derive an average severity for claims to be reported in the prospective policy period (recall most EPL coverage is on a claims-made basis), the EEOC awards ordinarily would be trended from the date the claim is filed to the average effective date of the prospective policy period. However, to offset the under representation of small verdicts mentioned above, the analyst may decide to ignore the trend from the date the claim is filed to the date the claim is settled and only reflect the trend from the date settled. In general there is a relatively short lag (less than 2 years) between the date the suit is filed and the date the suit is resolved.

Second, legal expenses need to be incorporated into the expected pure premium. Our

[8]This trend rate includes all claims and awards (e.g., class action claims and punitive damages). If the insurer were to exclude punitive damages and only apply one limit to class action claims the trend rate may be lower.

methodology incorporates legal expenses through an average loading onto the loss only pure premium.

Third, if the company's policy excludes punitive damages then punitive damages need to be excluded from the EEOC awards. Oftentimes, punitive damages will not be separately identified so that claims with a punitive damage award may need to be completely excluded.

Fourth, if a separate limit applies to each person in a class action lawsuit the EEOC awards must be adjusted to a per person amount. Currently, the awards are per occurrence (all individual awards are aggregated in class action settlements).

Once the claims are trended to 1996 (an adjustment for development on open claims is not needed as the EEOC claims are all closed) a severity distribution can be constructed[9].

As mentioned above, defense costs must be incorporated into our expected pure premium. The following methods can be used to select a loading for legal fees:

- Discussion with labor law attorneys regarding the average cost to defend a claim (costs will vary substantially depending on whether the claim is resolved at an EEOC hearing, settles quickly, settles after substantial trial preparation, or goes fully through

[9]Several actuarial papers outline methods which can be used to construct severity distributions. For example, see "A Practical Guide to the Single Parameter Pareto Distribution" PCAS, LXXII, 1985, pp. 44-84 by Stephen W. Philbrick.

a trial). Depending on the type of claims, legal costs could vary between $5,000 and $100,000 or more;

- Ratios of legal fees to losses for other coverages (D&O, products etc.). This ratio could then be multiplied by the selected severity from the EEOC data; and

- Experience of the company (if the company has written EPL policies).

Another consideration which needs to be incorporated is that the defendant may be responsible for paying successful plaintiff's legal costs in some cases (e.g., Title VII cases).

The following table displays a projected pure premium per employee in Colorado and Illinois for claims reported in 1996:

Projected Pure Premium Per Employee		
Pure Premium Component	Colorado	Illinois
1) Frequency (per employee)	.00232	.00166
2) Average Claim Cost[10]	$62,600	$62,600
3) Loading for Legal Fees (percentage of 2)[11]	1.40	1.40
4) Projected Pure Premium (1)x(2)x(3)	$203.33	$145.48

The above pure premium may also be adjusted for several other factors considered to affect the exposure:

- The existence and effectiveness of the firms' human resource department, including the strength of internal procedures (e.g., existence of an internal grievance procedure for employees alleging discrimination): Labor law attorneys generally believe that internal procedures can moderately affect frequency and can dramatically affect the severity of EPL related claims. The severity reduction is largely attributable to the fact that some claims will be resolved internally prior to the alleging party retaining an attorney and filing a lawsuit;

[10]For illustrative purposes, based on claims resolved in Fiscal Year 1993 by the Chicago District Office. The average award in 1993 is $52,737. Trending this average award to 1996 at 5% per year results in a projected severity for 1996 of approximately $62,600. The pure premiums in the above table are for the average size risk. If larger risks, due to better human resources practices, have a lower exposure, we would expect these insureds to have a lower pure premium. Likewise, if smaller risks, due to the lack of a human resource department, have higher exposure, we would expect a higher pure premium for these risks. In practice, the analyst may want to determine an average severity from a larger database (perhaps countrywide) than that used in our illustration, which used information only from the fiscal year 1993 Chicago District Office. As mentioned previously, the EEOC publishes the same data for all of its District Offices.

[11]Based on ALAE to loss for other liability as reflected in Best's Aggregates and Averages.

- Type of firm (manufacturing, governmental, law firm): Employees of some types of firms may have a greater probability of filing an EPL claim. Additionally, back pay is a significant portion of some claims and as wages vary by type of firm, pure premiums may also vary by type of firm;

- Management attitude: EPL is one line of insurance where many of the acts creating claims are intentional. Therefore training and an aggressive position by management with regard to reprimanding guilty parties is expected to reduce exposure to loss; and

- Prior claims experience of the firm: Prior claims experience, as in other lines of insurance, may indicate greater exposure.

VIII. CONCLUSION

Many attorneys and risk managers believe that most, if not all, firms will have Employment Practices Liability policies within the next five to ten years. EPL exposures are increasing at the same time that insurers are more clearly defining that it was never their intent to provide coverage for wrongful employment practices. Until a credible insurance claim database can be built to price for the exposure, it may be necessary for actuaries to utilize data published by the EEOC and other industry sources to price EPL policies.

CHICAGO DISTRICT OFFICE

Chicago filed 31 lawsuits, including 4 subpoena enforcement actions and 1 reporting/recordkeeping violation, in fiscal year 1993; of the suits filed on the merits, 21 were on behalf of an individual or individuals, and 5 on behalf of a class.

Of the suits filed on the merits, 15 were filed under Title VII, 1 under the Americans with Disabilities Act, 7 under the ADEA, 1 under the Equal Pay Act, 1 under Title VII and the ADEA, and 1 under Title VII and the Equal Pay Act.

Chicago resolved 33 lawsuits, including 7 subpoena enforcement actions, in fiscal year 1993, and recovered $1,371,154.21 in monetary benefits for victims of employment discrimination.

SUITS FILED

A. *Title VII*

1. *Race*

J.M. Jones Company and Supervalue, Inc.
No. 93-2116 (C.D. Ill. filed June 21, 1993) -- race (black); discharge.

Midwest Technical Consultants, Inc.
No. 92-C-7652 (N.D. Ill.-ED filed November 19, 1992) -- race (black); failure to hire.

The First National Bank of Chicago
No. 93-C-0917 (N.D. Ill.-ED filed February 11, 1993) -- race (black); discharge.

2. *Sex*

Acorn Tire & Supply
No. 93-C-5981 (N.D. Ill.-ED filed September 30, 1993) -- sex (female); sexual harassment, hostile and offensive work environment, constructive discharge.

Aldi, Inc.
No. 93-C-20238 (N.D. Ill.-WD filed September 14, 1993) -- sex (female); discharge.

Aldi, Inc.
No. 93-C-20239 (N.D. Ill.-WD filed September 14, 1993) -- sex (female); discharge.

Clayton Residential Home, Inc. d/b/a Clayton Home
No. 93-C-5549 (N.D. Ill.-ED filed September 10, 1993) -- class; sex (female); sexual harassment, hostile and offensive work environment, constructive discharge.

Jernberg Industries, Inc.
No. 92-C-8476 (N.D. Ill.-ED filed December 31, 1992) -- class; sex (female); failure to hire.

Sen-Pop, Inc. d/b/a "Popeye's Famous Fried Chicken"
No. 93-C-3403 (N.D. Ill.-ED filed June 8, 1993) -- class; sex (female); sexual

Chicago District Office -- Suits Filed and Suits Resolved

harassment, hostile and offensive work environment.

See also, below, Lake Zurich Ace Hardware; Hamilton, Carver & Lee.

3. *Retaliation*

Chicago Osteopathic Hospitals and Medical Centers d/b/a "Chicago Osteopathic Hospital and Medical Center," and Myerscough Healthcare, Ltd. a/k/a "Myerscough Medical Staffing, Inc."
No. 93-C-3100 (N.D. Ill.-ED filed May 24, 1993) -- retaliation; assignment.

Glemby Company, Inc. and MEI Salon Corporation
No. 93-C-3850 (N.D. Ill.-ED filed June 25, 1993) -- retaliation; terms and conditions of employment, discharge.

Metropolitan Educational Enterprises, Inc. and Leonard Bieber
No. 93-C-2099 (N.D. Ill.-ED filed April 7, 1993) -- retaliation; discharge.

New Heights Construction Company, Inc.
No. 93-C-5068 (N.D. Ill.-ED filed August 19, 1993) -- retaliation; failure to recall.

See also, below, Landau and Heyman, Inc.

4. *Religion*

Ilona of Hungary, Inc.
No. 92-C-6698 (N.D. Ill.-ED filed October 15, 1992) -- class; religion (Judaism); failure to accommodate, discharge.

Sheraton Chicago Hotel & Towers
No. 93-C-5918 (N.D. Ill.-ED filed September 28, 1993) -- religion (Jehovah Witness); failure to accommodate, involuntary layoff.

5. *National Origin*

See below, William Rainey Harper College.

6. *Reporting/Recordkeeping Violations*

The Chicago Club
No. 92C-6910 (N.D. Ill.-ED filed October 15, 1992) -- recordkeeping violation; failure to file EEO-1 reports.

B. *ADEA*

City of Des Plaines and City of Des Plaines Fire Department
No. 92-C-7328 (N.D. Ill.-ED filed November 5, 1992) -- age (65); involuntary retirement.

Dukane Corporation
No. 92-C-8279 (N.D. Ill.-ED filed December 22, 1992) -- age (59); discharge.

Egg Store, Inc.
No. 93-C-1950 (N.D. Ill.-ED filed April 1, 1993) -- age (62); discharge.

Graham Hospital Association
No. 93-1348 (C.D. Ill. filed September 13, 1993) -- age (over 65); benefits.

Landau and Heyman, Inc.
No. 93-C-5411 (N.D. Ill.-ED filed September 2, 1993) -- age (64), retaliation; terms and conditions of employment, discharge.

Lea-Ronal, Inc.
No. 93-C-2950 (N.D. Ill.-ED filed May 14, 1993) -- age (59); failure to hire.

Chicago District Office -- Suits Filed and Suits Resolved

Saline County
No. 93-CV-4126 (S.D. Ill.-ED filed May 3, 1993) -- class; age (over 40); failure to hire.

See also, below, William Rainey Harper College.

C. *Americans with Disabilities Act*

AIC Security Investigations, Ltd.; AIC International, Ltd. and Ruth Vrdolyak
No. 92-C-7330 (N.D. Ill.-ED filed November 5, 1992) -- disability (cancer); discharge.

D. *Equal Pay Act*

Lake Zurich Ace Hardware
No. 93-C-2329 (N.D. Ill.-ED filed April 16, 1993) -- sex (female); wages.

E. *Title VII/ADEA*

William Rainey Harper College
No. 93-C-4914 (N.D. Ill.-ED filed August 13, 1993) -- age (40), national origin (non-Hispanic); failure to hire.

F. *Title VII/Equal Pay Act*

Hamilton, Carver & Lee
No. 93-C-4068 (N.D. Ill.-ED filed July 7, 1993) -- sex (female); wages.

SUITS RESOLVED

A. *Title VII*

1. *Race*

Andrew Corporation
No. 81-C-4359 (N.D. Ill.-ED filed July 31, 1981) -- race (black), sex (female), national origin (Polish/Filipino/Hispanic); assignment, failure to hire, discharge; September 16, 1993 final judgment providing $42,520 in back pay and interest for 12 individuals.

Brakur Custom Cabinetry, Inc. and Kenneth Kurtz
No. 92-CV-02700 (N.D. Ill.-ED filed April 23, 1992) -- class; race (black), sex (female); failure to hire, failure to recruit; February 19, 1993 consent decree providing $460,000 in back pay for 75 individuals.

Christie Lodge Associates, et al.
No. 89-CV-02438 (N.D. Ill.-ED filed March 24, 1989) -- class; race (black); failure to hire; September 23, 1993 consent decree providing $200,000 in back pay for 89 individuals.

Continental Air Transport Company, Inc.
No. 92-C-3640 (N.D. Ill.-ED filed June 2, 1992) -- class; race (black), national origin (Hispanic); discharge; March 1, 1993 consent decree providing $48,000 in back pay for three individuals.

DODI Developments, Inc., et al.
No. 92 C 3369 (N.D. Ill.-ED filed May 21, 1992) -- race (black), religion (Jehovah Witness); demotion, discharge; November 9, 1992 settlement agreement providing $9,500 in back pay for one individual.

Metropolitan Management, Inc.
No. 92-C-6078 (N.D. Ill.-ED filed September 10, 1992) -- race (black); discharge; March 9, 1993 consent decree providing $3,551.21 in back pay for one individual.

Midwest Technical Consultants, Inc.
No. 92-C-7652 (N.D. Ill.-ED filed November

Chicago District Office -- Suits Filed and Suits Resolved

19, 1992) -- race (black); failure to hire; March 5, 1993 settlement agreement providing $38,965 in back pay, front pay and pre-judgment interest for one individual.

The First National Bank of Chicago
No. 93-C-0917 (N.D. Ill.-ED filed February 11, 1993) -- race (black); discharge; September 27, 1993 settlement agreement providing $29,000 in back pay and compensatory damages for one individual.

2. *Sex*

House of Blinds and More, Inc., et al.
No. 91-C-1091 (N.D. Ill.-ED filed February 20, 1991) -- sex (female), retaliation; failure to promote, discharge; February 8, 1993 settlement agreement, charging party rejected monetary relief.

Jernberg Industries, Inc.
No. 92-C-8476 (N.D. Ill.-ED filed December 31, 1992) -- class; sex (female); failure to hire; September 12, 1993 voluntary dismissal, no monetary relief.

Northwestern Steel & Wire, Inc.
No. 92-C-20106 (N.D. Ill.-WD filed February 7, 1992) -- sex (female), pregnancy; failure to hire; July 16, 1993 consent decree providing $117,500 in back pay for one individual.

Elgin Teachers Association
No. 86 C 6775 (N.D. Ill.-ED filed September 9, 1986) -- sex (female), pregnancy; benefits; July 13, 1993 unfavorable court order.

See also, above, Andrew Corporation; Brakur Custom Cabinetry, Inc. and Kenneth Kurtz.

3. *Religion*

Kimberly Quality Care
No. 92 C 5001 (N.D. Ill.-ED filed July 29, 1992) -- religion (Worldwide Church of God); denial of unpaid leave of absence, constructive discharge; December 21, 1992 consent decree providing $3,500 in back pay for one individual and notice posting.

See also, above, DODI Developments, Inc., et al.

4. *Retaliation*

Chicago Osteopathic Hospitals and Medical Centers d/b/a "Chicago Osteopathic Hospital and Medical Center," and Myerscough Healthcare, Ltd. a/k/a "Myerscough Medical Staffing, Inc."
No. 93-C-3100 (N.D. Ill.-ED filed May 24, 1993) -- retaliation; assignment; May 24, 1993 consent decree providing $9,156 in back pay for one individual.

Packaging Corporation of America
No. 92-C-6557 (N.D. Ill.-ED filed September 29, 1992) -- retaliation; failure to promote, discharge; April 28, 1993 favorable court order, no monetary relief.

Tivoli Enterprises, Inc.
No. 92-C-1031 (N.D. Ill.-ED filed February 10, 1992) -- retaliation; discharge; October 6, 1992 consent decree providing $12,000 in back pay and interest for one individual and notice posting.

Walsh Traylor McHugh Construction
No. 92-C-3639 (N.D. Ill.-ED filed June 2, 1992) -- retaliation; failure to recall; January 6, 1993 settlement agreement providing

Chicago District Office -- Suits Filed and Suits Resolved

$17,000 in back pay for two individuals.

See also, above, House of Blinds and More, Inc., et al.; below, Deere & Company.

5. *National Origin*

See above, Andrew Corporation; Continental Air Transport Company, Inc.

B. *ADEA*

Deere & Company
No. 92-C-4036 (C.D. Ill.-RD filed May 11, 1992) -- retaliation; failure to rehire; December 17, 1992 consent decree providing $28,700 in back pay for one individual.

Francis W. Parker School
No. 91-C-4674 (N.D. Ill. filed July 25, 1991) -- age (40 and over); failure to hire; July 25, 1993 unfavorable court order.

G-K-G, Inc., et al.
No. 89 C 8693 (N.D. Ill. filed December 21, 1989) -- age (70); discharge; November 10, 1992 order of dismissal.

State of Illinois
No. 86-C-7214 (N.D. Ill. filed September 24, 1986) -- age (40 and over); failure to hire; October 2, 1992 settlement agreement providing $25,000 in back pay for five individuals.

Dukane Corporation
No. 92-C-8279 (N.D. Ill.-ED filed December 22, 1992) -- age (59); discharge; May 26, 1993 consent decree providing $52,500 in back pay and liquidated damages for one individual.

State of Illinois and Fraternal Order of Police, Troopers Lodge No. 41
No. 92-C-2108 (/f/ 92-C-2883, N.D. Ill.) (C.D. Ill. filed May 21, 1990) -- class; age (60); involuntary retirement; February 16, 1993 unfavorable court order.

Spiegel, Inc., and Otto Versand GMBH
No. 90-C-6363 (N.D. Ill.-ED filed October 31, 1990) -- class; age (over 40); discharge; May 14, 1993 settlement agreement providing $52,262 in back pay for nine individuals.

Spiegel, Inc., and Otto Versand GMBH
No. 90-C-4208 (N.D. Ill.-ED filed July 24, 1990) -- class; age (over 40); discharge; June 14, 1993 order of dismissal, no monetary relief.

C. *Americans with Disabilities Act*

AIC Security Investigations, Ltd.; AIC International, Ltd. and Ruth Vrdolyak
No. 92-C-7330 (N.D. Ill.-ED filed November 5, 1992) -- disability (cancer); discharge; June 7, 1993 jury verdict awarding $222,000 in back pay, compensatory and punitive damages.