

# Employer Sues Its Law Firm for Malpractice and EPLI Insurer for Bad Faith

**California Employment Law Update** on **August 21, 2019**

These days, more employers than ever are purchasing Employment Practices Liability Insurance (“EPLI”) to cover them in the event they get sued for employment-related claims. (See our earlier posting on that topic: [“A Handy Guide for Choosing and Using Employment Practices Liability Insurance Coverage.”](#))

As we pointed out in that article, there are definitely some “cons” that go along with the perceived advantages of insurance coverage for employment claims. One of those “cons” is that the insurance companies usually insist that the employer use their lower-rate panel counsel to defend the case. Because the insurance-appointed counsel will be looking to the insurance carrier (not the employer) for their next case, the lawyers typically consider the insurer to be their “client” at least as much if not more than the employer is.

In a recently filed case in the Los Angeles Superior Court, an employer with EPLI coverage is suing its insurer-provided law firm (Gordon Rees Scully Mansukhani, LLP) for legal malpractice and the insurance company (Admiral Insurance Co.) for bad faith denial of the duty to defend its insured (the employer). Among other things, the employer alleges that the Gordon & Rees law firm “consistently treated Admiral as the ‘real’ client – consistently favoring Admiral’s interests while simultaneously ignoring its responsibilities to [the insured employer].”

The employer claims that the law firm defended the underlying lawsuit “in a manner which steered liability towards the ‘wage and hour’ claims (which were subject to a strict sublimit [of liability]) away from the fully covered Employment Practices claims thereby creating a conflict of interest with the [employer].” The employer further alleges that the law firm “acted consistently as if its sole duty was one of absolute fealty to the insurance carrier that was paying its bills, and remained silent as to its conflict of interest, the better to serve its insurance company masters.”

While all of these allegations are simply that (allegations and not facts), this lawsuit highlights some of the inherent risks and challenges created by EPLI. Should you have any questions about EPLI coverage generally or the issues that arose in this case in particular, our employment and insurance coverage lawyers are standing by to assist.

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