23rd National Conference on Employment Practices Liability Insurance

Identifying New Opportunities in the EPLI Market, Minimizing Exposure to EPL Risks, Defending Against the Newest Claims, and Reducing Litigation and Settlement Costs

Sessions Include:

- Trends in the EPLI marketplace given new sources of claims including systemic discrimination cases, agency-initiated class action-type cases, and coordination among federal offices pursuing investigations and litigation against employers
- Recent case law regarding coverage underlying workplace class actions and EPL, EEOC pattern and practice claims, and court review of EEOC conciliation efforts
- Wage & hour and EPL: the market, coverage needs, the latest on exclusions, coverage buy back and sublimits, and best practices for mitigating exposure to claims
- Pregnancy accommodation claims and their interplay with EPLI
- ADA and FMLA: coverage complexities, “hot button” accommodation issues, and solutions for minimizing exposure to disability discrimination/FMLA claims
- The impact of social media in the workplace: benchmarking best practices and policies in today’s cyber-culture
- NLRB’s continued scrutiny over employers’ practices that “chill” concerted activity
- Current trends in workplace harassment: bullying, religious discrimination, and third-party discrimination
- Retaliation and whistleblowing claims in today’s workplace culture: EPLI coverage given the expanded scope of anti-retaliation provisions
- Triangular relationship of insurers, insureds, and defense counsel
- Background checks, criminal history checks, and credit checks and impact on EPLI
- Legalized marijuana, medical marijuana, and bringing concealed weapons into the workplace: the implications for employers and coverage
- Examining the nuances of joint employer cases, NLRB guidances on where the liability falls, and beyond

Inquire about special rates for government, academia, insurers and brokers.
Here are just some of the agencies, companies and firms already participating

EEOC
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Wake Forest University Baptist Medical Center
Dow Jones & Company
Marsh & McLennan Companies, Inc.
Boehringer Ingelheim
care Management
Mayo Clinic
BridgeStone Retail Operations, LLC
Advance Auto Parts
Bank of America
Willis
CNA
Euclid Specialty Managers
USLI
Aspen Insurance
Allied World Assurance Company
Hartford Insurance Company
Freedom Specialty
Euclid Specialty Managers
Hiscox
The Hanover Insurance Group
Travelers
Aon
Socius Insurance Services
XL Insurance
Zurich
Marsh USA, Inc
Markel
Greenberg Traurig LLP
Plunkett Cooney
Ford Harrison LLP
Wilson Elser
 Kaufman Dolovich & Voluck LLP
Axinn, Veltpor & Harkrider LLP
Kaufman Borgest & Ryan LLP
Starr, Butler, Alexisopoulos & Stoner, PLLC
Gordon & Rees LLP

Be a part of the nation's leading EPLI forum. ACI’s 23rd installment is returning to NYC for its summer installment with speakers from all over the nation to ensure you are prepared to manage and defend against the increasing number of EPLI claims being filed.

The program has been revamped and updated to include enhanced industry perspectives, and account for new developments, strategies and industry trends. Claims professionals, underwriters, risk managers, in-house counsel, and outside counsel must thoroughly understand the ever changing EPLI market with new coverage options, ways to reduce costs of defending against and settling EPLI claims, and how to minimize exposure to risk.

Sessions for this summer include:

• Trends in the EPLI marketplace given new sources of claims including systemic discrimination cases, agency-initiated class action-type cases, and coordination among federal offices pursuing investigations and litigation against employers
• Recent case law regarding coverage underlying workplace class actions and EPLI, EEOC pattern and practice claims, and court review of EEOC conciliation efforts
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• Retaliation and whistleblowing claims in today’s workplace culture: EPLI coverage given the expanded scope of anti-retaliation provisions
• Triangular relationship of insurers, insureds, and defense counsel: minimizing ethical issues; conflicts that require intervention with regard to how the claim is defended, coverage issues and late reporting of claim; cost effective ways to work together; evaluating an EPLI case for settlement consideration & best practices for efficiently resolving an EPLI claim
• Background checks, criminal history checks, and credit checks and impact on EPLI
• Legalized marijuana, medical marijuana, and bringing concealed weapons into the workplace: the implications for employers and coverage
• Examining the nuances of joint employer cases, NLRB guidance on where the liability falls, and beyond

This event will fill up quickly, so register now by calling 1-888-224-2480, faxing your registration form to 1-877-927-1563 or registering online at www.AmericanConference.com/EPLI.

WHO YOU WILL MEET

In-House EPL Professionals, including:
• Underwriters
• Claims Counsel
• Employment Counsel
• Brokers
• Product Managers
• Risk Managers
• Human Resource Managers

Private Practice Attorneys Specializing in:
• Labor and Employment
• Insurance
• Employment Discrimination
• Class Actions

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ACI has a dedicated team which processes requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.
### Day One: Monday, July 27, 2015

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<tr>
<td>7:15</td>
<td>Registration &amp; Continental Breakfast</td>
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<tr>
<td>8:00</td>
<td><strong>Co-Chairs’ Welcoming Remarks</strong></td>
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<tr>
<td></td>
<td><strong>Mercedes Colwin</strong></td>
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<td></td>
<td>Managing Partner, New York Offices</td>
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<td>Gordon &amp; Rees LLP</td>
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<td><strong>Patrick H. Hicks</strong></td>
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<td>Shareholder</td>
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<td>Littler Mendelson P.C.</td>
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<tr>
<td>8:05</td>
<td><strong>Views from the Brokers and Carriers on Claim Trends, New Products Entering into the Market, and Underwriting Considerations</strong></td>
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#### Brokers/Carriers Part I – 8:05

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<th>Speaker</th>
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<tr>
<td>Steven Boughal</td>
<td>Senior Vice President, Hartford Insurance Company</td>
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<tr>
<td>R. Damian Brew</td>
<td>Managing Director/FINPRO, Marsh USA, Inc.</td>
</tr>
<tr>
<td>Chris Lavelle</td>
<td>AVP/EPL Product Leader, USLI</td>
</tr>
<tr>
<td>Courtney Covici</td>
<td>Senior Claims Analyst, Allied World Assurance Company</td>
</tr>
<tr>
<td>Daniel Aronowitz</td>
<td>Managing Principal, Euclid Specialty Managers</td>
</tr>
<tr>
<td>Carolyn Leder</td>
<td>Assistant Vice President, Management Liability Claims, Aspen Insurance</td>
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#### Brokers/Carriers Part II – 9:20

<table>
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<tr>
<td>Christopher McNulty</td>
<td>Senior Vice President, Hiscox</td>
</tr>
<tr>
<td>Temperance Walker, JD</td>
<td>Manager, Specialty Claims, The Hanover Insurance Group</td>
</tr>
<tr>
<td>Brian Weiss</td>
<td>Vice President, FINEX North America, Willis</td>
</tr>
<tr>
<td>William Fahey</td>
<td>Senior Vice President, Zurich</td>
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#### Moderators for Panel I and II:

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<tr>
<td><strong>Mercedes Colwin</strong></td>
<td>Managing Partner, New York Offices, Gordon &amp; Rees LLP</td>
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- Identifying emerging opportunities; Identifying and acquiring new business opportunities; Working with brokers to acquire new business; Looking at new and cutting edge coverage and premiums; Status check on rate
- How brokers approaching the market: view from the brokers on what clients are most concerned about
- Bringing new products to market: Identifying coverage gaps in the market; Underwriting concerns; Claims considerations
- Current exclusions
- Trends and potential vulnerabilities: New tactics for managing EPLI
- Claims trends: Types of claims; Industries with the most claims
- Late claim reporting
- Duty to defend policies
- Consent to settle clauses and settlement roadblocks
- Underwriting considerations as they relate to claims trends and market conditions
- How carriers are responding to the increased number of EPL claims being filed
- Foreign claims: Insuring US companies with foreign locations; insuring domestic companies with foreign origins; Which carriers have these policies and what is being covered
- What is the market offering now?

10:35  Morning Break

10:45  The Clients’ Perspective: Views From In-House Labor and Employment Counsel on Current Trends in the EPLI Marketplace and Current Drivers That Are Underlying the Purchase Of Coverage

<table>
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<tr>
<td>Nicole A. Groves</td>
<td>Employment Counsel, Advance Auto Parts</td>
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<tr>
<td>Beth Mabe Gianopulos, JD</td>
<td>Counsel, Wake Forest University Baptist Medical Center</td>
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<tr>
<td>Kevin G. Chapman</td>
<td>Assistant General Counsel, Dow Jones &amp; Company</td>
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<tr>
<td>John W. Hamlin, Esq.</td>
<td>Chief Employment Counsel, Marsh &amp; McLennan Companies, Inc.</td>
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Philip Weis  
Director, Senior Employment Counsel  
Boehringer Ingelheim Pharmaceuticals, Inc.

Sharon C. Zehe  
Legal Counsel  
Mayo Clinic

Michael J. Ranallo  
Vice President, General Counsel & Secretary  
Bridgestone Retail Operations, LLC

Shalanda Ballard  
Labor and Employment Counsel  
3M Office of General Counsel

Amy Littman  
Counsel  
Bank of America

Patrick Hicks  
Shareholder  
Littler Mendelson, P.C.

Reshma Khanna  
Senior Claims Examiner  
Markel – Claims

Ricki E. Roer  
Partner, Chair of National Employment and Labor Team  
Wilson Elser

Mary E. Pivec  
Partner  
Ford & Harrison LLP

Gerald L. Maatman, Jr.  
Partner  
Seyfarth Shaw LLP

• When is coverage needed?  
• Avoiding law suits by minimizing claims: Early resolution strategies  
• Negotiating settlements with multiple defendants and claims  
• Best practices for controlling the cost of the defense of claims: Payouts; Alternative fee arrangements; Implementing internal cost-reduction procedures; Reducing the costs associated with the use of defense counsel; Considerations when selecting and using defense counsel

2:30 Wage and Hour and EPLI: Assessing the Market on Wage and Hour Coverage Needs; the Latest Claims Involving Independent Contractors, Overtime, Off-the-Clock and Minimum Wage and How to Mitigate Exposure; DOL’s Initiatives on Exemptions, and Beyond

Matthew Irvine  
Chief Underwriting Officer  
XL Insurance

Richard L. Steer  
Partner  
Tarter Krinsky & Drogin LLP

Thomas P. Hams, Esq.  
Managing Director, National EPLI Practice Leader  
Aon

• Claims of failure to pay overtime  
  o Misclassification of overtime employees  
  o status of employee as exempt/non exempt for overtime  
  o Specific tests by the DOL to determine whether employees should be exempt from overtime; DOL’s initiatives on exemptions  
  o Caregiver status (in home care v. institutional care); EEOC guidance on caregivers  
• Minimum wage  
  o Issues related to properly paying tips in the restaurant industry; Improper tips pooling; working off the clock without getting paid; states that prohibit tip pooling  
  o Minimum wage for federal contractors  
• Off the clock cases  
  o Employees being told they can’t be paid overtime; falsified time sheets; time clock that rounds one way  
• Class action claims  
• Raising minimum wage: Adjusting internal policies for higher minimum wage  
• Underwriting for wage and hour coverage  
  o Scope of coverage  
  o Defense-only sublimits  
  o Indemnity coverage  
  o Coverage limits  
  o Claim types: overtime, misclassification, exempt status  
• Assessing the costs and benefits of available wage and hour coverage  
• Leased employees, temporary staffed employees, independent contractors and PEO (professional employee organization)  
• Drafting indemnification agreements  
• What is covered/not covered in the EPLI policy  
• How and why franchisors are responsible for wage and hour issues
• Reviewing recent California Supreme Court decision regarding independent contractors
  o EPLI issues that can arise involving independent contractors
  o Class action claims involving student interns and employers’ failure to pay minimum wage and overtime
Reviewing the mixed results in class action suits
• Lawsuits involving FLSA (Fair Labor Standards Act)

3:30 Pregnancy Discrimination Claims and the Intersection of the ADA/FMLA; Providing Accommodations; Pregnancy Complications as a Disability; Recent Guidelines by the EEOC on Pregnancy Discrimination; and Assessing the Impact of Young v. UPS

Kim Bush, Esq.
Senior Claims Analyst
Allied World Assurance Company

Theresa Smith Lloyd
Partner
Plunkett Cooney, PC.

Michael W. Hawkins
Partner
Dinsmore & Shohl LLP

David Rocklin
Assistant Vice President
Supervisor, EPL Claims
Chubb & Son Inc.

• Examining pregnancy discrimination claims
  o Being sick at work
  o How miscarriages are being blamed for failure to accommodate work from home or time off
  o Performing regular work duties; traveling
  o Coming back to work after the birth of the baby
  o Claims women were forced out of work
• New York’s law providing for accommodations for pregnant women
  o What are the laws in other jurisdictions?
• ADA and its definition of pregnancy as a disability
  o Complications from pregnancy
  o Recent guidelines by the EEOC on pregnancy discrimination
  o Employers’ responsibilities under the Pregnancy Discrimination Act and the ADA
  o How pregnancy discrimination is prohibited similar to sex discrimination
• Reviewing Young v. UPS
  o Drafting a pregnancy neutral policy; employees injured on the job; not conditioning accommodation leave on pregnancy
  o Extending pregnancy benefits to fathers

5:25 Legalized Marijuana, Medical Marijuana, and Bringing Concealed Weapons Into the Workplace

Laura R. Lapidus, Esq.
Management Liability Risk Control Director
CNA

Joseph A. Starr
Partner
Starr, Butler, Alexopoulos & Stoner, PLLC

• States that legalized marijuana use for medical purposes; what are the ramifications?
• Bringing guns into the workplace; Employees’ right to bring concealed weapons to work
  o Challenging company policy on 2nd Amendment grounds; Altering existing policies and practices in response
  o Creating a safe workplace; promoting safety
• Examining companies that have zero tolerance for drug use
• Identifying the main sources of employer liability arising from each

4:35 The Bermuda Triangle of the ADA, FMLA, and Workers Compensation in the EPLI Realm: Understanding the Complexities, Creating Solutions, and Reducing Claims

Dean Falavolito
Partner
Margolis Edelstein

Meredith Cavallaro
Partner
Paduano & Weintraub LLP

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Director of Sales, American Conference Institute
Tel: 212-352-3220 x5242
w.tyler@AmericanConference.com
Day Two: Tuesday, July 28, 2015

7:30 Continental Breakfast

8:00 Keynote Address

Constance S. Barker
Commissioner
U.S. Equal Employment Opportunity Commission

The U.S. Equal Employment Opportunity Commission shows no signs of letting up on its aggressive agenda. From systemic discrimination cases, to agency-initiated class action-type cases, to coordination among offices to pursue systemic investigations and litigation against employers, employers are left wondering what will be next. Commissioner Barker will share her candid views on the EEOC’s recent actions and its future direction. She will also discuss the top compliance issues she believes employers should be aware for the fall of 2015 and start of 2016.

Introduction and Q&A Moderated By:

Gerald L. Maatman, Jr.
Partner
Seyfarth Shaw LLP

8:50 Current Trends in Workplace Harassment and How to Reduce Exposure: Bullying, Religious Discrimination, and Third-Party Discrimination

Mark D. Dore
Shareholder
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.

Elizabeth Pryor Johnson
Shareholder
Fowler White Burnett, P.A.

Gail L. Gottehrer
Partner
Axinn, Veltrop & Harkrider LLP

Sarah Colleen Courtman
Partner
Kissel Hirsch & Wilmer LLP

• Assessing whether sexual harassment claims are covered under standard EPLI policy; Special riders
• Other types of claims
  o Defamation, invasion of privacy, intentional infliction of emotional distress, tortious interference
• Workplace bullying
  o The parameters of the law, best practices, knowing how to avoid potential liability for acts or failures to act, and drafting effective policies
  o State governments proposing/passing legislation addressing workplace bullying
• Lesbian, gay, transgender causes of action pursued under Title VII
• Religious discrimination
  o Companies perceived failure to provide reasonable accommodations (prayer, foot washing stations for Muslims, religious dress, tattoos, etc)
  o Examining the Abercrombie case
• Vendors, customers, and other third parties sexually harassing an employee
  o Protecting employees from third parties who do business or interact with employees

10:00 Morning Break

10:10 Background Checks, Criminal History Checks, and Credit Checks and Their Impact on EPLI

Clinton J. Wesolik
Senior Claim Counsel
Bond & Specialty Insurance, Travelers

Lisa S. Shrewsberry
Partner
Traub Lieberman Straus & Shrewsberry LLP

Dove A.E. Burns, Esq.
Partner
Goldberg Segalla

Rachel L. Freedman, Esq.
Claim Consulting Director
Employment Practices Liability Claims
CNA Specialty Lines

• EEOC partnering with the FTC and cracking down on employer engaging in unlawful background checks
  o Credit checks
  o Consumer background checks
  o EEOC examining employers’ use of criminal backgrounds under Title VII; statistical disparate impact on certain individuals (hiring certain group of people versus other people)
• State laws that regulate background checks
• Violations of the Fair Credit Reporting Act
• Reviewing the BMW case on background checks
• Examining the Freeman case

11:10 Retaliation and Whistleblowing Claims: Underwriting Coverage, Managing Risks Through Employment Policies, Reporting Processes for Employee Complaints & Internal Investigations, Litigating Retaliation Lawsuits, and Reporting Safety Violations to the NLRB and OSHA

David W. Long-Daniels
Shareholder; Chair, Atlanta Labor & Employment Practice Co-Chair, Global Labor & Employment Practice
Greenberg Traurig LLP

Joel R. Hlavaty
Frantz Ward LLP

Linda G. Burwell
President
National Employment Counsel, PLLC

• Implementing risk management techniques, including:
  o Up-to-Date, Accurate and Comprehensive Employment policies
  o developing and implementing an effective anti-retaliation policy
  o monitoring supervisors for adverse actions following an employee complaint
  o implementing a reporting process for unlawful retaliation
  o resolving employee complaints fairly and confidentially
  o when and how to conduct an internal investigation
  o evaluating adverse employment decisions before they are implemented
• Supreme Court’s expansion of who can be subject to retaliation: third party retaliation or ‘cat’s paw theory’
• Effect of University of Texas Southwestern Medical Center v. Nassar
• 3rd party claims of retaliation
• Overcoming jury sympathy for employees and bias towards employers in retaliation cases
• Interpreting “adverse action”: How broad is it?
• Distinguishing between legitimate claims and disgruntled employees
• Underwriting coverage in light of recent case law developments
• Insurability of punitive damages in retaliation claims
• FMLA and retaliation claims
• Countering the usage of discrimination and whistleblower claims as precursors to retaliation claims
• Preserving right to attorney's fees under 42 U.S.C. § 1988
• Improving the likelihood of succeeding at dismissal, summary judgment and trial
• Reporting safety violations to NLRB and OSHA
  o Statement of policies agreement between the NLRB and OSHA allowing an employee to report safety violations to the NLRB

12:10 Impact of Social Media in the Workplace and the NLRB's Continued Scrutiny Over Employers' Practices and Policies

Karen P. Fernbach
Regional Director, Manhattan Regional Office
NLRB, Region 2

James G. Paulsen
Regional Director, Brooklyn Regional Office
NLRB, Region 29

Starr M. Kincaid
Partner
Lipson, Neilson, Cole, Seltzer & Garin, P.C.

• EPLI coverage as it relates to the use of social media by employers and employees
• Given that information seen on social media cannot be "unlearned," how does an employer protect itself from a discrimination claim that a hiring/firing decision was based on protected characteristic
• Legislation designed to protect employees from their employers' "intrusion" into what is already in the public realm, and the disputes that arise from it
• EEOC policies regarding social media
• NLRB guidance on social media: how non-union employers can find themselves in the middle of the Board's processes on a retaliation claim for matters for terminating an employee for complaints made on social media
• Current state of the ever-changing NLRB and court rulings on what is and is not permissible in the social media context: best practices and policies
• How social media impacts the workplace from a wage and hour perspective
• Corporate policies on the use of social media
• How is social media affecting the hiring process
  o Limitations on the use of background checks
  o Lessons learned from use of social media in the workplace
• Pitfalls to avoid when using social media to screen potential and current employees
  o Minimizing exposure to potential privacy and discrimination claims
  o Best practices regarding accessing information that would otherwise not be readily available to an employer
• Using social media as evidence
• Determining whether and when to use information obtained from social media sources to make employment decisions
• Assessing the potential for employer liability arising from employee use of social media, both on and off of corporate time
• Implementing policies and procedures to prevent employee misuse of social media
  o Responding to employee misconduct
• Privacy concerns that can arise from employer and employee use of social media
• Managing and defending against claims arising from the use of social media

1:10 Networking Lunch for Speakers and Delegates

2:10 Understanding the Nuances of Joint Employer Cases, NLRB Guidance on Where the Liability Falls, and Beyond

3:00 The Triangular Relationship of Carriers, Insureds, and Defense Counsel: Defending an EPL Claim, Litigation Guidelines and Billing, Settlement and Agendas, Coverage Issues, Cost Effective Ways to Work Together, Minimizing Ethical Issues, and More

Thomas Lookstein
Claims Manager
Starr Adjustment Services, Inc. – A Member of Starr Companies

Claudia A. Costa
Special Counsel
Marshall Dennehey Warner Coleman & Goggin

Philip R. Voluck, Esq.
Managing Partner – Pennsylvania Office
Kauffman Dolowich & Voluck LLP

John E. DeLascio
Partner
Meckler Bulger Tilson Marick & Pearson LLP

• How does this relationship play out and what issues to watch out for
• Tips for getting on insurers' panel of defense counsel
• Cost effective ways to work together
• Coordinating the defense with the insured and the carrier
• Communication with plaintiffs and company employees
  o What's appropriate and what's not?
• Ethical considerations for corporate counsel, defense counsel, and carrier claims counsel relating to the defense and settlement of covered claims
  o Potential conflicts of interest
  o Resolving contentious issues
• Coordinating the defense with the insured and the carrier
• Gaining a deeper understanding of the motives and interests of both insureds and carriers when they are faced with an EPL claim
• Carrier perspectives on working with insureds to better manage claims
• Carrier expectations as they relate to the defense of a claim and the role of in-house and outside counsel
• Carrier perspective on settlement of claims and how it may differ from the insured's perspective
• How carriers, insureds, and defense counsel can best work together to manage and defend against class actions

Conference Ends

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