

A pineapple with its green crown sits in a field of vibrant green grass. The background is a clear blue sky with soft, white clouds. The entire scene is framed by a white horizontal band that contains the conference title.

# THE HOSPITALITY LAW CONFERENCE: SERIES 2.0

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# Securing and Maximizing Insurance Coverage for “Wage and Hour” and Other Employment-Related Claims

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- Represents policyholders in connection with disputes with their insurers and insurance brokers
- Helped clients recover more than \$500 million
- Areas of focus: EPL claims, D&O claims, CGL claims, large first-party property insurance and business interruption claims



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# Coverage for “Wage and Hour” Claims

- Broad coverage grants in EPL insurance policies
  - “Misrepresentation”
  - “Breach of contract”
  - “Failure to implement or enforce appropriate policies and procedures”
- Exclusions often not be as broad as insurers contend
  - FLSA and “similar” provisions of state law
  - “Wage and hour law” exclusions
  - Non-standard: many variations
- “Public policy” misnomers



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# Coverage for Breach of Contract Claims

- Non-standard
- Often, coverage expressly granted for breach of contract claims in EPL policies
- Even absent express coverage, broad coverage grant in policy may be triggered
- “Breach of contract” exclusions
  - vary widely
  - May be subject to broad exceptions
- Insurers often overreach with public policy defenses
  - No bar on defense
  - No bar on indemnity for certain contract damages



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# Coverage for Punitive Damage Awards

- Insurers wrong to assert that punitive damages are never covered
- Often expressly covered to the extent insurable
- Punitive damage exclusions increasingly rare
- In California, punitive damage awards insurable in variety of contexts
  - Vicarious liability of employers
  - Lack of corporate “approval” or “ratification” of wrongful conduct





# Making the Most of Coverage for Defense Costs

- Hourly rate “caps” not always justified
  - Absent controlling policy provision, insurer must pay “reasonable” hourly rate
  - Various factors considered
- Allocation provisions
  - Remember: once triggered, defense duty generally extends to all claims
  - Absent “agreement,” insurer generally responsible for all fees and costs that benefit defense of covered claim(s)



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# Overcoming “Related Claims” Defenses

- Failure to tender prior “claims” not always fatal
- Prior claim might not be a “claim” at all
- Prior claim might not actually be “related” under terms of the policy
- New “claim” might involve broader allegations or claims
- Insurer defenses based on “related claims” provision subject to strict scrutiny



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