



Reinsurance Symposium 2016



MAY 10–12, 2016
GEN RE HOME OFFICE, STAMFORD, CT



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The Legal Environment and Claims Issues

Presented by Mindy Pollack

- Awareness of new laws, rulings and developments that may affect your business and how we monitor / analyze them

And

- See how you can tap into Gen Re resources to help you – How can you use us? How can we better serve you?

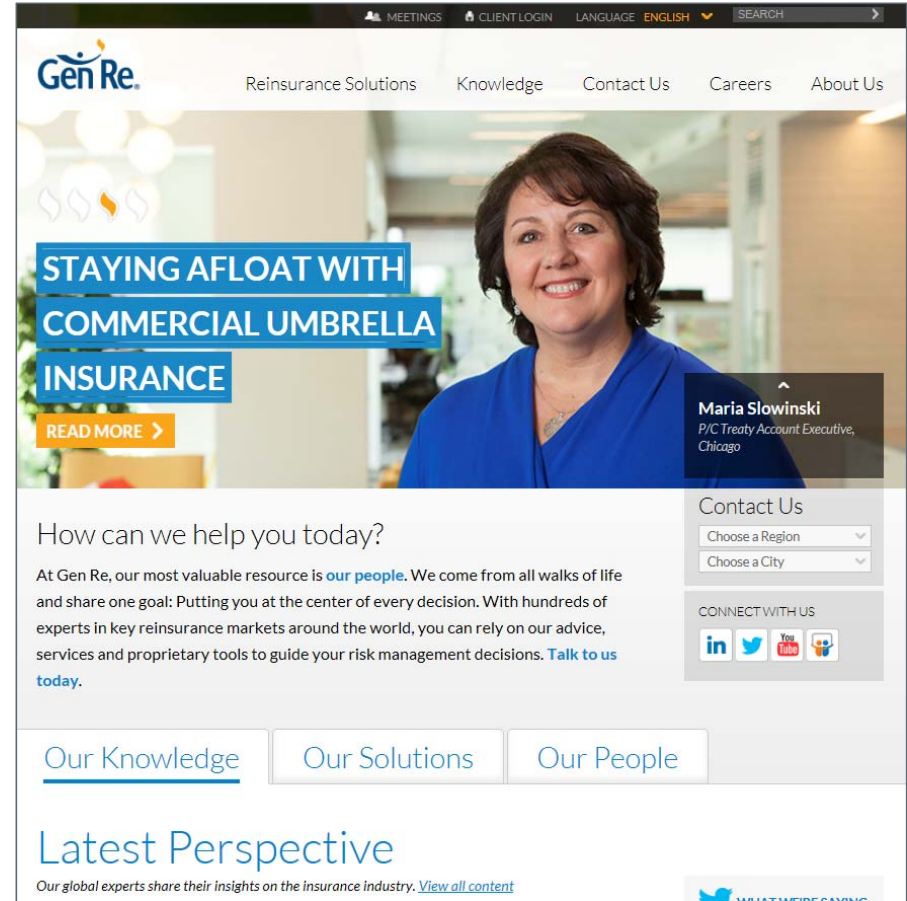
Research, Emerging Issues and Publications

- Research Publications – Regular newsletters and special research
- *NewsBrief* – Everyday insurance news
- Claims Support – Account and Claim Topics
- All / Any Lines of Business Publications
- Line of Business Publications
- Special Research / Tools

News *Brief*

Gen Re Perspective – Blog

- www.genre.com/subscribe
 - Latest developments and their potential impact
 - *Recent Examples*
 - E-Cigs
 - Chimney Fires
 - 3D Printing
 - Pools
 - Green Construction
 - EEOC and Claim Trends
 - Subscribe on our website – Select the topics you are interested in
 - Invites sent to customers to sign up



The screenshot shows the Gen Re website homepage. At the top, there is a navigation bar with links for MEETINGS, CLIENT LOGIN, LANGUAGE (ENGLISH), and SEARCH. Below this is the Gen Re logo and a secondary navigation bar with links for Reinsurance Solutions, Knowledge, Contact Us, Careers, and About Us. The main content area features a large image of Maria Slowinski, a P/C Treaty Account Executive in Chicago, with the headline "STAYING AFLOAT WITH COMMERCIAL UMBRELLA INSURANCE" and a "READ MORE" button. Below the image is a "How can we help you today?" section with a text block and a "Contact Us" form with dropdown menus for "Choose a Region" and "Choose a City". To the right of the form are social media icons for LinkedIn, Twitter, YouTube, and Facebook. At the bottom, there are three buttons: "Our Knowledge", "Our Solutions", and "Our People". The footer includes the text "Latest Perspective" and "Our global experts share their insights on the insurance industry. View all content".

Research Publications

- **Emerging Issues**
 - New scientific / other developments and their impact
 - *Examples*
 - Concussions, Driverless Cars, E-Cigs
- **Online Tools – Client Extranet**
 - UM/UIM, Subrogation, Pollution, Bad Faith Laws
- **Line of Business Research / Webinars / Online Presentations**
 - Employment claim trends
 - Tornado frequency

The screenshot shows a newsletter page from Gen Re Research, dated March 2016, focusing on insurance issues. The main article is titled "School Liability—Student Athlete Concussions in the U.S." by Jeffrey Weisel, Esq., and Charlie Kingdollar, Gen Re, Stamford. The article discusses the increasing scrutiny of student athlete concussions by parents, school administrators, medical professionals, legislators, and the courts. It mentions high-profile settlements involving the NFL and NCAA, and the media's focus on these incidents. The article also notes that the medical establishment has been publishing findings of various research institutes and national boards, leading to new guidelines for concussion protocols. A sidebar on the right contains a table of contents and an "About This Newsletter" section. The footer identifies the publication as a Berkshire Hathaway Company.

Gen Re Research

MARCH 2016 INSURANCE ISSUES*

School Liability—Student Athlete Concussions in the U.S.
by Jeffrey Weisel, Esq. and Charlie Kingdollar, Gen Re, Stamford

Student athlete concussions continue to be scrutinized aggressively by parents, school administrators, medical professionals, legislators, and members of the plaintiffs' attorney bar. A significant impetus for this is the U.S. media's coverage of high-profile concussion settlements involving both the National Football League (NFL) and the National Collegiate Athletic Association (NCAA). The media's scrutiny has also followed coverage of suits filed against the National Hockey League and even professional wrestling by former athletes who have sustained concussions. In addition, the medical establishment has been publishing the findings of various research institutes and national boards. Those findings often result in new guidelines concerning concussion protocols.

In this article we review the litigation landscape of concussions in student athletics and the latest claim and settlement activity. The availability of legal defenses and state laws are also explored. Finally, we consider the risk management and underwriting approaches that we have seen in the marketplace. Knowledge and attention to the concussion issue will only grow at the professional, amateur and school levels. That makes insurer knowledge and attention even more important.

Contents

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> Parental Waivers	4
> Governmental Immunity	4
Current State Laws and Baseline Testing	5
Risk Management, Underwriting Approaches and Future Litigation	6

About This Newsletter
Created for our clients, our *Insurance Issues* publication provides an in-depth look at timely and important topics on insurance industry issues.

A Berkshire Hathaway Company

Research, Emerging Issues and Publications – From Requesting Support or Attending Programs

<i>Support Request</i>	<i>Examples</i>
Research on Specific Risks and Exposures	<i>State Environments, Umbrella Cause of Loss</i>
Emerging Issues Presentations	<i>E-Cigs, Food Risks, Nano</i>
Claims Presentations	<i>Annual Claims Seminars – Upcoming IBHS on Property in June</i>
Policy Form Reviews / Drafting	<i>>100 Clients >300 Forms</i>
Issues Roundtables	<i>With client groups on range of current issues</i>

Recent Presentations / Research – Sampling

- Hot Topics and Regional Issues
 - Cyber / Data Breaches and New Products
 - Winter Property Loss and Claim Insights
 - Habitational Loss and Demographic Trends
 - Claims Involving Historical Properties
 - Construction Defect Issues
 - **Most recent: Commercial Auto Trends**



Research, Emerging Issues and Publications – Behind the Scenes at Gen Re

- Reading the latest scientific, legal and industry news
- Monitoring all ISO and AAIS activity for issues, forms and input
- Product Development / Maintenance / Support – EPLI and Cyber
- Tracking new legal developments
- Tracking PCIAA and NAMIC reports and activity

The screenshot shows a blog post on the Gen Re website. At the top, the word 'PERSPECTIVE' is written in large, spaced-out letters. Below it is a breadcrumb trail: 'Home > Knowledge > Blog > 2015 EEOC Statistics and EPLI: Why Are Retaliation Claims Increasing?'. The main title of the article is '2015 EEOC Statistics and EPLI: Why Are Retaliation Claims Increasing?'. The post is dated 'March 23, 2016' and is written by 'Bill Baumann', an Executive in New York. The article is categorized under 'Region: North America'. The main text begins with 'The Equal Employment Opportunity Commission (EEOC) released its litigation and enforcement statistics for fiscal year 2015, and as usual, there are several stories in the annual report. My first thought is always to see if the same trends play out in our own EPLI program. Many of them do.' A small photo of Bill Baumann is shown next to his name and title. Below the main text, there is a paragraph starting with 'Among the 2015 highlights, the EEOC received 89,385 charges of workplace discrimination, which is only slightly higher than 2014 experience and the first year of increase since 2010. This is a story of the economy. Charges peaked during the recession and fell when employment rates improved. We cannot yet say if the slight uptick - less than 1% - signals the start of an upward swing or leveling off. We can say that the 2015 charge volume is still significantly higher than in the pre-recession years, and we expect it to remain so.' On the right side of the page, there is a 'Most Popular' section with three links: 'The Impact of Trends in the Food Industry on Risk Management (Presentation)', 'Fighting Workplace Stress - How Resilience Can Help Improve Mental Health', and 'Apartment and Condo Pools: Staying Afloat With Commercial Umbrella Insurance'. At the bottom right, there is a blue box with the text 'Keep up with the latest underwriting, actuarial and claim trends' and a 'SUBSCRIBE NOW' button.

Research and Development – Behind the Scenes at Gen Re

Topic	Examples
ISO / AAIS / MSO – Influencing industry wordings to get the best forms possible	<ul style="list-style-type: none">• <i>Cyber exclusions AND Cyber Coverage</i>• <i>Farm Program Updates</i>• <i>Liquor Liability</i>• <i>Cyberbullying exclusion</i>• <i>Indiana pollution wordings</i>• <i>Drone, Rideshare</i>
Filtering new cases and laws	<ul style="list-style-type: none">• <i>Gen Re search term list</i>

Our Current Search Inquiries Weekly – All New Cases Involving

- Auto UM/UIIM
- Airbnb, TNCs
- Bad Faith Liability
- Concurrent Causation
- Construction Defects
- Cyber / Data Breach
- Drywall / Fracking
- EPLI Coverage
- Exclusions
- Farms and Pollution
- Food Contamination
- Foreclosures
- Homeowners Verdicts
- Hurricanes and Coverage
- Internet Liability
- ISO Policies
- Landlord Liability
- Liquor Liability
- Anti-Stacking Clauses / *Montrose*
- Pandemic / Health Exposures
- Privacy
- Sexual Abuse Coverage
- Sinkholes
- Sub-limits in Policies
- Supreme Court Cases
- Umbrella Policy Coverage
- Underground Tanks
- Vacancy
- Valued Policy Laws
- ***Large Verdicts!***

When Wordings, Claims and Emerging Issues Come Together
A story of Floods, Earthquakes and Beavers



Policy Forms and New Cases — Floods and Earthquake Example

- Different Personal and Commercial Lines language for water
- HO flood exclusion for “human or animal forces or any act of nature”
- Not in Commercial Property policy
- Why different? It’s all about beavers...
- Then came Katrina levee breach
- Many coverage suits – Impact of wording
- Soon ISO revised commercial property forms
- ***Will fracking be next test of human vs. natural activity?***

Product Development – Cyber Example

- Data Breach exclusions emerged in 2014
- Cyber Insurance products to fill void
- Gen Re co-developed Cyber insurance product
- Like EPLI – Exposure, need, product
- Publications on exposures, exclusions and new products
- ISO input on exclusions and products
- What will come after Cyber?

Gen Re. Research

DECEMBER 2015 POLICY WORDING MATTERS®

The Meaning of “Publication” in the Electronic World—From Data Collection to Data Breaches
by Josh Mooney, Esq., White and Williams

Concerns over privacy have expanded exponentially, and insurers have borne witness to an ever-expanding privacy risk under commercial policies in the context of data collection and storage, electronic surveillance, and data breaches. ISO, GL and BOP policies all provide limited privacy liability coverage, defining “personal and advertising injury” to include injury arising out of “oral or written publication, in any manner, of material that violates a person’s right of privacy.” The meaning of a “publication” has become a critical legal issue for determining the scope of this coverage.

Standard commercial policies do not define the term, thereby leaving its interpretation to the courts. Many times, the focus of inquiry is the nature of the dissemination of the information. Some courts hold that a “publication” in connection with a claim of invasion of privacy requires “a clear promulgation to the public” of the information at issue. Yet courts sometimes provide inconsistent answers. These inconsistencies cannot be explained merely by jurisdictional differences. Sometimes, the nature of the alleged privacy violation can have a subtle but significant impact on a court’s interpretation. This principle is evident in the context of the electronic world.

Data Collection and Consumer Tracking
Courts have found that the collection of data does not necessarily invoke a “publication.” In *Urban Outfitters*, the Third Circuit held that the wrongful collection of personal information from consumers during point-of-purchase

Contents

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by Lucille Hyland, Gen Re, Stamford 4

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• AAS Introduces New Farm Endorsements 6

Legal Viewpoint
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by Mindy Pollack, Gen Re, Stamford 7

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by Christine Singer, Gen Re, Stamford 9

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• Legal Round-Up 11

Gen Re is appreciative to Josh Mooney and White and Williams for this contribution to our publication.

About This Newsletter
Policy Wording Matters is written for underwriters, program managers, claims and legal professionals, and policy drafters. It discusses coverage issues and solutions cutting across many lines of business.

A Berkshire Hathaway Company

- **Ridesharing and Room Sharing – What insurance is available?**
 - **Auto** – Uber etc. – Still hot issue everywhere
 - **Home** – Airbnb – A few bad stories
 - What insurance will cover a loss?
- **Marijuana Laws – Auto, HO, Farm, Commercial, Work Comp, Employment**
 - Drugged driving
 - House fires and plant loss
 - Medical treatment for WC?
 - Discrimination if enforce zero tolerance policy?
- **What's Hot? Gig Economy Issues and Needs**
 - Who is an Employee?
 - Who is an Employer?
 - Current wind blowing toward finding employment relationship

The screenshot shows a newsletter page from Gen Re Research. At the top, it says "Gen Re. Research" and "JUNE 2015" on the left, and "INSURANCE ISSUES*" on the right. Below the header are three small images: a marijuana plant, a person in a lab coat with a stethoscope, and a person using a pipe. The main article is titled "The Marijuana Legalization Trend in the U.S.—Thoughts About the Potential Impact on Claims" by Paul Ruiz, Gen Re, San Francisco. The article discusses the legalization of marijuana in 23 states and the District of Columbia, and its potential impact on insurance claims. A table of contents is on the right, listing sections like "Laws and Insurance" (2), "Overview of Marijuana Laws (map)" (2), "Homeowners" (3), "Extraction and Fire Loss" (3), "Processing, Production and Growing Exclusions" (4), "Commercial Policies" (4), "Personal Auto" (5), "Farm and Personal Umbrella" (6), and "Workers' Compensation" (6). At the bottom, there is a section "About This Newsletter" and a footer "A Berkshire Hathaway Company".

- **What's Not?**
 - Construction Defect Legislation
- **Privacy, Privacy, Privacy – Federal and State**
 - Growing laws – More than data breaches
 - Even zip codes can trigger claims
 - Fitbits, shopping habits, online behavior
 - Pro-consumer direction
 - Website policies – Gen Re Opt In approach
 - Big Data and Privacy must co-exist

What's Next?

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Subscription Management Center

Our experts will continue to share information and insight
designed to help keep you informed about the issues
important to you.

So what's different? Going forward you'll only receive our articles and
blogs if you sign up. You choose the topics and we'll keep you informed.

Sign up today so you don't miss out!

CHOOSE NOW



- The more we know about the issues affecting your business, the better job we can do for you.
- Tell us what to watch for, and we will get the right support to you.
- Much of it is in our publications!
- *What issues can we monitor for you?*
- *What products can we help you with?*

Even if you don't see it, we can still be working for you.

Here Are Five Takeaways

- Watch out for “Employee/Employer” and Privacy issues – they will only get hotter in year to come.
- Take advantage of our Blog and Client Extranet.
- Take advantage of your Trade Association memberships.
- Leverage Claims and Policy Wording resources – at Gen Re and in your company.
- Mindy is an animal lover.



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Thank you!

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