Managing the Split Between Domestic and International CGL Policies

US-based multinational organizations face many challenges in building truly global insurance programs, including the potential for gaps and overlaps between domestic and international commercial general liability policies. Such inefficiencies in insurance program structures could lead an organization to retain more risk than necessary or leave it vulnerable to litigation and other exposures potentially costing millions of dollars.

It's important for risk managers to carefully review their insurance policies to understand how they will respond in the event of a loss. The following case studies provide some examples of potential gaps and overlaps, and solutions that risk managers can consider.

Note: The commentary below is intended for US-based multinational companies. Although similar concepts apply for companies based in other countries, the design, structure, and needs of multinational insurance programs will vary depending on the company's home country. Coverage decisions should be based on actual policy forms and endorsements for your country, in consultation with your insurance advisor.

Case Study:

SLIP AND FALL

SITUATION: A large US-based hotel chain operates resorts and hotels in 50 countries. A French citizen staying in one of the chain's New York hotels slips on a wet marble floor and is injured. The traveler returns to France, where he files a suit against the hotel.

POTENTIAL GAP: Many organizations use unendorsed US ISO commercial general liability (CGL) forms, which would not provide coverage for a lawsuit brought in France. Meanwhile, a typical international casualty policy will not cover a US occurrence.

SOLUTION: The most likely — and commercially viable — solution is for the hotel's international casualty insurer to pick up this exposure, including US occurrences. Some international casualty insurers already provide this type of coverage, and most others will do it upon request, with varying levels of underwriting requirements.

Case Study:

PRODUCT FAILURE

SITUATION: A US manufacturer of electrical panels enters into a supply agreement with a contractor that separately wins a bid to construct a high-end boutique hotel in the British Virgin Islands. A fire breaks out at the hotel's grand opening, destroying the hotel and neighboring villa. Several hotel guests also sustain injuries and lose their personal belongings. The cause of the fire is determined to be a fault in the electrical panels. The hotel guests and villa owner bring a large lawsuit in the US against the electrical panel manufacturer.

Endorsements can narrow policy's domestic coverage territory, but an insured should work with its insurance advisor to review scenarios that could apply to a product liability loss based on location of occurrence, suit, product manufacture, and sale.

POTENTIAL OVERLAP: Although the occurrence is in the British Virgin Islands, an unendorsed US ISO CGL policy form will respond in this instance because the suit is brought in the US. A typical international casualty policy will also cover the incident because it occurred within the coverage territory.

This can present a classic "other insurance" issue if an insured has different domestic and international insurers that argue over the loss. A coverage issue could also arise if the insured has different retention levels in its domestic and international policies. International casualty coverage is usually purchased on a guaranteed cost basis; this could lead to an example where an organization believes its guaranteed cost policy covers a loss in the British Virgin Islands, but its international casualty insurer argues that it shares the loss with the domestic insurer. If the loss is $2 million and the domestic policy carries a $1 million retention, the insured could pay $1 million within its domestic retention, instead of paying nothing (if the policies had been structured in a manner to shift all liability to the international casualty policy).

SOLUTION: The most likely solution is to eliminate the overlap on the domestic policy, but insureds should ensure that policies dovetail properly and the insured does not lose coverage.

Available endorsements can narrow the domestic coverage territory, but an insured should work with its insurance advisor to review the basic scenarios that could apply to a product liability loss based on location of occurrence, suit, product manufacture, and sale. Also, when deviating from traditional coverage territory wording, it's important to report accurate and complete exposures to the insurer.

But narrowing coverage may also have unintended consequences. For example, an insured that removes Canada from its domestic policy's coverage territory because it has a separate policy in Canada scheduled directly to its umbrella policy might think it has effective coverage. But if the Canadian policy only covers Canadian entities, the insured loses coverage for US entities that have Canadian occurrences.

Another solution available to insureds is to amend the "other insurance" clause on the domestic policy and add difference-in-conditions (DIC) and difference-in-limits (DIL) wording. This will clarify that the domestic policy is excess of the international policy(ies) but will also drop down to fill in any gaps in coverage or limit.

Case Study:

CANADA AND US TERRITORIES

Before beginning a local project, the Canadian subsidiary of a US-based construction company procures local admitted coverage. The US parent's domestic CGL policy also provides coverage for Canada, including all subsidiaries of the US parent. When a crane at the construction site topples over and damages another building, the question arises over which policy or policies should respond.

POTENTIAL OVERLAP: Generally, an unendorsed "domestic" CGL policy for the United States includes coverage for Canada. In this case, a separate policy was purchased in Canada. With this additional local policy, the organization could have two primary policies responding to the same loss, creating another "other insurance" issue.

SOLUTION: One of the simplest solutions is to include Canada in the international casualty program and exclude it from the domestic. But this could have negative pricing implications if the retention levels are different. It may be best to start with a retention strategy and structure the program around that.

If it is determined that the retention level of the domestic program is preferable for Canada, it may be possible for the domestic insurer's affiliate company in Canada to issue a companion policy on an admitted basis. But the duplicate coverage will still need to be addressed. A potential solution here is to exclude the Canadian entities from the domestic policy and schedule the Canadian companion policy directly to the global umbrella.

Generally, there is less of a risk to the insured if the companion policy and domestic policy are issued by the same insurer. If that's the case, it should be possible to carve out the Canadian policy coverage from the US domestic policy and schedule the Canadian companion policy directly to the umbrella/excess.

The same concept applies to Puerto Rico and other US territories and possessions. US organizations that operate in or sell into these territories should ensure that they have coverage via a local policy in the territory, a primary international casualty policy, or a domestic policy providing non-admitted coverage. An insured can use a combination of these solutions, but generally will not want coverage on all three.

LOCATION OF MANUFACTURE, SALE, OR LEGAL ENTITY MATTER

In managing international casualty programs, it's important for insureds to be familiar with any qualifiers to coverage territory definitions. These qualifiers can substantially change how policies respond by eliminating coverage if products are made or sold outside of the coverage territory. And some insurers go as far as to eliminate legal entities outside of the coverage territory regardless of location of occurrence or lawsuit. Insureds should carefully review such language in their policies, in conjunction with their insurance advisors.

With insurers increasingly consolidating domestic and international casualty under singular leadership — and, in some cases, underwriting — the US is moving toward an environment in which truly global programs will be a common solution.

BUILDING A TRULY GLOBAL CASUALTY INSURANCE PROGRAM

Unlike most countries, where structuring a multi-country casualty program is a truly global endeavor, domestic and international casualty is split in the US. But with insurers increasingly consolidating domestic and international casualty under singular leadership — and, in some cases, underwriting — the US is moving toward an environment in which truly global programs will be a common solution. Global programs offer many benefits, including greater economies of scale — meaning reduced pricing — the potential for cross-collateralization, and elimination of coverage territory gaps.

To structure a global casualty program, insureds need to work closely with both insurers and brokers. Yet even when the same carrier is underwriting both sides of the program, insurers and brokers often take a siloed approach to domestic and international casualty. Breaking down these siloes and aligning the resources of insurers' and brokers' domestic casualty, international casualty, and international regulatory and tax experts is critical to an organization's success. By taking a global, holistic view on loss and retention analysis, compliance requirements, cost, and coverage needs, insureds can eliminate coverage gaps and overlaps and build an effective program that offers robust protection around the world.

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