

ProNetwork News

Risk Management Tools for the Design Professional

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International Practice: International Liability Exposures

By Wm. Hugh Holley, Principal, Professional Liability Brokers/Insurance Office of America

In the last 20 years, regional and smaller design firms based in the U.S. have found a new demand for their services in the international marketplace. Foreign clients now seek the services of boutique firms and specialty consultants, and what was once the sole domain of large design firms is far more common. This article will discuss the international liability exposures (except for professional liability) faced by architects and engineers who provide services abroad.

Most if not all domestic General Liability, Workers Compensation, Property and Auto Liability policies either exclude or seriously limit coverage outside the United States, its Territories, and Canada. Let's use one of my firm's clients as an illustration.

An Atlanta-based specialty consulting firm has subsidiary companies in Dubai and Beijing. In addition to General Liability and Automobile Liability exposures, it was determined that the firm had various international employee- related exposures arising from:

- U.S. employees that work abroad
- Employment of Host country personnel
- Employment of Third Country (non- U.S, non-Host country) Nationals in the Host country

Host Country and Third Country Nationals also routinely traveled to other countries in the region. Both Dubai, UAE and Beijing, PRC require the foreign subsidiary entities to purchase coverage from local insurance carriers and brokers.

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To address these exposures and requirements, our client first purchased an international policy in the U.S. International policies are readily available and address a number of exposures presented by working abroad. Due to the nature of the various risks involved, these policies cost-effectively combine multiple coverages that businesses practicing outside the U.S. require. Coverage in an international policy includes but is not limited to:

- General Liability
- The foreign equivalent of Employer's Liability
- Hired/Non-Owned Auto

Employer's Liability

Injuries to workers traveling internationally can be a major exposure for U.S. firms. If the travel is other than incidental, most likely there would be no coverage for injuries to a U.S. employee under the domestic Workers Compensation policy. Without an international policy, that injured U.S. employee would be uninsured for medical expenses, loss of wages, rehabilitation or repatriation back to the U.S.

There is also exposure to U.S. firms that hire non-U.S. employees (Host and Third Country Nationals) while operating internationally. Most developed nations provide worker-related benefits as part of their national social insurance programs. Host Country workers are covered for work-related injuries that occur within their own countries, but there could be an exposure to the U.S. employer when Host Country Nationals travel outside the Host country. If the U.S. firm hires Third Country Nationals, these employees most likely would not be covered under the social benefits program of the Host country. International policies that include Employer's Liability coverage would protect the employer for work-related injuries to the Third Country Nationals as well.

The Employer's Liability aspect of this coverage also addresses injuries to the firm's U.S. employees including exposures for employees while traveling from the U.S. to the Host country, and would cover Third Country Nationals while traveling outside their country of origin or hire. The premium basis for the Atlanta firm was the number of trips, both from the U.S. to foreign countries and trips of Host and Third Country Nationals when traveling internationally from the country of hire. Payroll was used to calculate the cost of coverage for the domestic policy for U.S. employees and Third Country Nationals who were permanently located in the Host country.

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The premium for the U.S. policy was \$4,660; the premiums for the Host country (Dubai) policy was \$5,000 and the premium for the China policy was \$1,400. The Dubai broker billed their policy directly to the subsidiary office there, and the Chinese company direct billed the premium to the insured through the U.S. insurance carrier they used. The manner that coverage is secured and paid for depends on the laws of the Host country. If there are no physical international locations, only the U.S.-based international policy would be required.

Business Auto Liability

The Business Auto coverage portion of the International policy is more limited and only provides coverage on an excess basis. The auto policy provides coverage in excess of the Non-Owned or Hired Auto Liability coverage required by the country where the vehicle is hired (rented) or domiciled. An often-overlooked exposure for U.S. firms is that Mexico is clearly not included in the definition of territory. When working in Mexico and other foreign territories, firms should purchase Hired Auto Liability in the Host country even if they have International Business Auto coverage. If local coverage is not purchased, the U.S. firm or employee could be personally responsible for the amount of the mandatory coverage required by compulsory auto liability limits in the Host country prior to payment by the U.S. International Auto policy. The compulsory insurance requirements can be \$25,000 or higher. It is highly suggested that the international traveler also purchase physical damage coverage (comprehensive and collision) on rented/hired autos as most international business auto policies limit physical damage coverage to \$2,500. If the physical damage coverage is not purchased then the firm and/or its employees might be responsible for damages to the rented vehicle in excess of the stated amount.

Umbrella Coverage

The ability to secure Umbrella Excess coverage for the International policies under the U.S. domestic Umbrella policy is often overlooked. Whenever possible, the International policy should be scheduled on the U.S. Umbrella policy. When scheduled under the Umbrella policy, it is important to confirm with the U.S. insurer that they will provide excess cover over the Business Auto, General Liability and Employer's Liability portions of the International policy. It is important to confirm that the territorial exclusion has been modified to be consistent with the coverage provided in the International policy.

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Available Coverages

Most International policies provide traditional General Liability, Workers' Compensation, Business Auto and Employers' Liability coverage. Some International policies can be endorsed to provide the following additional coverage, if requested:

- I. Employee Repatriation, provided as part of the Workers Compensation International policy
- II. Property Insurance Coverage at designated or undesignated International locations
- III. Property in Transit outside the U.S. coverage territories
- IV. Valuable papers and E.D.P. coverage to cover the cost to reproduce paper and electronic documents
- V. Bail bonds
- VI. Medical Exposure for non-job related accidents – Travel Accident Coverage
- VII. Tenants and Neighbors coverage to protect for damages to tenants and neighbors in office space rented or occupied by the firm
- VIII. Kidnap and Ransom coverage. This coverage usually includes a stipulated sum to be paid and the fees for the services of a firm specializing in negotiating the release of kidnapped employees.
- IX. Travel assistance service for employees traveling internationally

Some countries require U.S. firms to purchase liability and property coverage for a company domiciled in the Host country. Coverage provided by these policies will vary by country, but are required if you have a business location domiciled in the Host country. Even if coverage is purchased locally, securing an International policy is a very good idea. The U.S.-based International policy can act as "Difference In Conditions" coverage to augment the Host country's policies. It is particularly important to have the U.S. International policy if U.S. employees travel outside the Host country, Host country employees travel to other countries, or Third Country Nationals are employed in a non-Host country.

As indicated above, these policies are easy to secure and are cost effective. The minimum premium to purchase most International policies for a small design firm is \$2,500. A well-developed International Insurance program will provide coverage similar to the coverage offered by U.S. policies but provide the protection in Territories not covered by standard domestic policies issued to cover the U.S. based risk exposures.

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BROKER'S NOTES



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Moore Insurance Services offers many professional liability and property & casualty insurance programs. Many of these programs are endorsed or commended by the professional associations and organizations that we support including: The American Institute of Architects (AIA), National Society of Professional Engineers (NSPE), American Council of Engineering Companies (ACEC), Michigan Association of Environmental Professionals (MAEP) and Michigan Society of Professional Surveyors (MSPS).

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