

Safely



SPEAKING

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Coverage territory: what about exports?

THE Canadian Commercial General Liability (GCL) policy contains a territory clause that explains where in the world your coverage is valid. Note that while the clause is more or less standard in Canada, there are exceptions made by individual insurance companies. Before acting upon any of the items discussed in this article, please be sure to review your own policy for possible exceptions in the language it uses.

One of the key points to note is that while the policy basically covers your business activities in Canada and the USA, it will also cover goods that you sell here but which you may be exporting, or which might otherwise find their way to other parts of world. It is very important to recognize that if you had a foreign-based sales representative and the sale was made in that territory, then such a sale made in a foreign country would not be insured, even if the goods are to be shipped from Canada or the U.S.

In addition to the sale having been made in Canada or the U.S., the “action,” meaning the claim for damages or the lawsuit and its subsequent settlement, must also take place in Canada or the USA.

Companies who export but who have no overseas sales staff, no foreign-located sales offices or factories, warehouses or inventory, might have a tendency to feel that their Canadian policy gives them all the protection they need. After all, an injured party would have to come to North America to bring suit and at that point the Canadian policy would come into play, providing the same protection it would for their domestic sales. This is partially true but not very good business – not if that company intends to go on exporting its products to foreign markets.

Hidden pitfalls

The invisible part of the claim action, the part that would not be seen by the Canadian insured, is the judgement that takes place within the legal system of the foreign country. In a recent claim that occurred in Germany, resulting from a piece of defective agricultural equipment, an injured German resident did not go to the time, expense and considerable inconvenience of taking his action across the Atlantic and bringing suit in Canada. Instead, he obtained a judgement against the dealer and manufacturer of the equipment “in absentia.” He simply brought his case in a German court, showed that the defendants had made themselves unavailable to have writs served on them, had failed to respond to all legal demands, had offered no defence or arguments and had failed to show up in court when the case finally went to judgement. Having taken all reasonable action, the plaintiff won his case by default. It was a matter of ‘no contest’ and he won his case against the defendants in their absence.

For all practical purposes this might seem a rather hollow victory. The German plaintiff won the case and is fully entitled to recover in the eyes of the German courts but there is no practical way for him to come to Canada or the U.S. and collect what is now owed. The German award carries no weight outside of its own jurisdiction. However, the plaintiff

is free to attach whatever assets of the dealer and/or manufacturer that may find their way to Germany. That could take the form of the next piece of equipment that is shipped to Germany as an export or, for that matter, perhaps any other country in the European Community where national borders have become almost invisible. The next very expensive piece of machinery to arrive at the dockside in Hamburg could be met by a bailiff holding a piece of paper to say that it now belongs to an injured party. The result could prove to be both expensive and embarrassing if the seizure inconveniences a customer who was expecting and who is relying upon the arrival of his new purchase.

An insured who has plans to export and sees this as a regular and ongoing future opportunity would be well-advised to purchase local insurance in the foreign market.

Worse situations

Some Middle Eastern countries seize people, not property. A representative of the defendant, visiting a trade show or flying in to discuss product requirements or some other purchase detail might find himself detained until his employer posts a bond. The bond is always in an amount sufficient to satisfy the outstanding judgement. Your representative might go free, but the bond will be kept and used to settle the award.

The Canadian CGL is therefore intended to provide only incidental, limited coverage for only the most irregular foreign exposures. An insured who has plans to export and sees this as a regular and ongoing future opportunity would be well-advised to purchase local insurance in the foreign market. This frees up assets from the risk of liens being placed against them and provides the financial stability to fend off losses without it affecting trade. The normal expectation is that domestic-based export sales will hopefully provide the opportunity for expansion into foreign markets. With that goal in mind it is vital to create the image of a financially responsible and welcome trading partner.

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The information in this article is intended to be general in nature and may not apply in your province. The advice of independent legal or other business advisors should be obtained in developing forms and procedures for your business. The recommendations are designed to reduce the risk of loss, but should not be construed as eliminating any risk or loss.

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