

# International Liability: Lessons Learned

## International Liability Insurance's Day In The Spotlight Is Long Overdue

Although some headway has been made in recent years, an alarming number of international assignees are thrust into foreign environments without liability insurance befitting their circumstances. International assignees are routinely exposed to elevated and aggravated risk factors that merit closer attention and a coherent strategic risk management response on the part of industry professionals.

Unlike property insurance which pays the policyholder for loss or damage by insured perils to property, liability insurance pays *third parties* damages for loss or injury arising as a result of the negligence of the policyholder/insured as awarded by the courts, or as negotiated in out-of-court settlements.

So why is it then, that international assignees are the poster children for international liability risks?

## Fish Out Of Water

Try as everyone may to sensitise international assignees and their families to cultural disparities, and cultivate among them a natural awareness to regional nuances, the simple fact is that individuals thrust into an alien environment where they find themselves unaccustomed to foreign social conventions, local laws, regional traditions and values, and indigenous cultures, might be more inclined to transgress invisible boundaries, cause third party damage and ultimately bring legal action upon themselves, deserved or not. From a strategic legal perspective, professional legal advisors might further suggest that being a foreign defendant associated with a foreign multinational may not be an ideal starting point in an unsympathetic overseas court.

## Sex And Drugs And Rock N' Roll

International employee assistance programme (EAP) providers will be the first to tell you that the emotionally taxing roller-coaster that is the expatriate experience means that when compared to their domestic counterparts, international assignees can exhibit elevated levels of substance and alcohol abuse, infidelity,

anxiety and depression approaching levels one might expect to see at say, a relocation and mobility trade show. Scary stuff.

At any rate, these psychological challenges can and do lead to anti-social behaviours that impact third parties and ultimately give rise to the aforementioned lawsuits, legal expenses or out-of court settlements.

## All Aboard The Gravy Train

Certain, shall we say, opportunistic individuals endowed with a lower-than-average compliment of integrity and character have been known to target international assignees as a means of tapping into the ostensibly bottomless pit of overseas goodwill funding and reputational risk financing.

Just as casinos and cruise lines seem to be subject to a statistically aberrant and mathematically insupportable number of slip and fall neck injury claims in low traffic corridors at odd hours when witnesses are in short supply, it is not unprecedented that international assignees in the employ of deep pocketed, globally recognised, multi-billion dollar multinationals might be targeted and exploited for questionable and frivolous law suits by unscrupulous litigants.

So how is it then that something of such critical importance repeatedly fails to register on the radar of industry professionals and senior executive management to the extent that many assignees find themselves with no protection at all?

## Don't Forget To...

During vital planning stages when checklists are formulated, the seemingly logical and natural thing to do is to chronologically replicate the series of tasks and activities that were performed when establishing a household in the country of origin: engaging utilities, procuring appliances, executing service contracts etc.

And it all makes sense right up until you get to the part about insurance. Why? Because the vast majority of people have never actively contemplated the purchase of standalone liability insurance in the first place. The highly evolved and competitive nature of the domestic insurance market has

rendered it an entirely inappropriate template for international risks and daily life.

Decades ago, in the course of rabid, unbridled pursuit of commoditised market share, domestic property insurers tried to distinguish their homeowners' insurance offerings by introducing various sweeteners, add-ons, bells and whistles, and systematically bundled enhanced coverage features such as personal liability insurance into their property policies to attract new applicants. After years of competitive jockeying, million-dollar personal liability limits have become ingrained as standard coverage integrated into domestic homeowners policies.

Given the prolonged environment of passive, detached procurement of liability insurance, and the pitiful state of financial and insurance literacy, many otherwise intelligent people have no idea they even have any domestic liability insurance to begin with, let alone that it stops at the border. Worse still, is when international assignees know only enough to be dangerous and assume that the domestic liability coverage will provide them protection when overseas, which couldn't be further from the truth.

Where the disconnect is exacerbated is that typically, international assignees migrate from homeowners on the domestic front to tenants overseas, and in doing so, at best, might downgrade to a tenant's policy with very restricted local cover primarily in respect of the rented premises. Unbelievably, many assignees embark on assignment entirely bare in terms of liability insurance.

## From A To B, And Then What...?

Ironically and inexplicably, the relocation industry is falling all over itself to ensure that there is coverage in place for household goods in transit and storage. However, pervasive myopia and widespread linear thinking means that tragically few people inquire as to how these items might best be covered once they arrive in the host country. Which is quite ironic in light of the fact that the goods are in transit for mere days and overseas for years.

Because liability coverage in the

domestic market is so often bundled with property cover, the oversight tends to drag the liability coverage component out of site lines along with it.

### The 'Company' Has This Covered....Right?

There is no shortage of rationalised excuses as to why international liability insurance is overlooked, but none greater than the comforting assumption all parties cling to that someone, somewhere high up the chain of command, is proactively managing the situation.

Not so much. In the vast majority of cases, the truth shatters that myth with a deafening crash.

Multinationals will typically have a considerable self-insured retention (excess/deductible) before transferring risk to insurance carriers in exchange for premium. A million dollars or more would not be uncommon. Below this self-insured level threshold corporate risk managers divide the world into things they have control over and things they don't. Insurance, loss control engineering, training and education, avoidance, segregation and all sorts of other devices are employed to manage risk over elements where the company has a degree of care, custody and/or control.

All of this adds up to millions of dollars of expense and premium exchanging hands to support a fragile enterprise-wide risk management programme handled with a reverence more befitting a Faberge egg. Multinationals form highly collaborative and transparent partnerships with insurers so that when a true crisis strikes (worldwide product recall, and natural disaster, for example), insurers will respond.

These strategies have an operational emphasis and focus on the commercial activities of the company. They do not contemplate the personal exposures of international assignees.

So, when an international assignee gets sued for negligence only to discover that her or she has no insurance, one of two things typically happens:

1) The lawsuit is below the company's deductible and as such does not trigger coverage;

2) The lawsuit is of a magnitude where insurance comes into play, however, executive management isn't prepared to file a multimillion dollar claim that would sour relations with insurers who never dreamed they'd be on the hook for the perhaps dodgy actions of expatriate

employees outside the scope of their work, offsite, after hours, and not under the direction of their superiors. There is simply no organisational will to pursue an insurance claim of this nature.

In both cases what this invariably leads to is an extremely lonely walk down the mahogany corridors of the corporate executive wing to ask the CEO to cut a multi-million dollar cheque.

Everyone knows how much CEO's love surprises. Such a bold career move could hypothetically have a negative impact on one's professional advancement and bonus compensation.

It is nothing less than dumbfounding that corporations far too often react to expatriate liability situations in the less-than-optimal post claims environment, rather than adopting a proactive and cost-effect strategy beforehand.

### When it hits the fan

Being the subject of third party litigation doesn't necessarily mean any given assignee is a bad person. Accidents can and do happen, despite best efforts to be a generally good citizen. One might innocently knock a pot of geraniums off a balcony during a particularly enthusiastic sunrise salutation and conk some poor soul on the head several stories below.

On the other hand, certain assignees do indeed behave inappropriately and their actions can land them in front of a judge. Overtures that might be received as commonplace, playful and harmless in the country of origin can register as nothing less than a personal assault in a host country.

Although markedly different, in the courts both scenarios can be labelled negligence, and entail substantive legal fees and judgments awarding damages or out-of-court settlements.

When it comes to liability claims, the empirical evidence and accumulated experience suggest that there are two predominant categories of international assignees.

In the first instance, something transpires whereby the assignees, to their great horror, find themselves subject of a lawsuit in a foreign jurisdiction. Recall our squeaky-clean yoga practitioner and the now-infamous pot of geraniums.

The assignee's first instinct is to discreetly contact legal advisors and insurance brokers back in the home country to set wheels in motion to make the problem go quietly away, and

hope desperately and silently that their employer remains forever blissfully unaware that anything happened.

Their horror is magnified considerably when they come to learn that they have no overseas cover or means of funding legal representation whatsoever. These once timid employees evolve into hostile adversaries rather quickly, and the company's policies and management are brought under a microscope as counterparties point fingers and shift blame.

The second situation is altogether different, but ironically engenders a similar outcome.

In this scenario the assignee may saunter blithely into the office one day and cavalierly toss a subpoena towards an unsuspecting superior and quip...'you'll need take care of this'.

Aghast, the superior might futilely sputter out a laundry list of reasons why this shouldn't touch the company, however, from certain assignees' perspective, accurate or not, the portion of each day in which they expect to fall under the auspices and protection of their employer is twenty-four hours while on assignment. This belief is adhered to whether they are in the bottom of an open pit mine wearing a hard hat, typing madly on a laptop in an airport lounge, or bellied up to the bar at a local watering hole on the wrong side of town. Needless to say, behaviours in each respective environment can differ dramatically.

At the end of the day what matters is that the line of demarcation between home and work is, in relative terms, clearly established in the domestic environment and entirely open to interpretation in the context of foreign assignments. It is unlikely that many multinationals would willfully volunteer to be the precedent test case against an employee for whom they made no arrangements for personal liability insurance in the pre-departure environment, funded or not.

The awkward fact that many employers now provide 24-hour non-occupational extended healthcare coverage to certain assignees, but no liability cover, might be difficult to reconcile before a judge or jury.

Meanwhile, in an ever globalising world, it's practically a given that where an international assignee is the subject of a lawsuit, that the company will be named as a defendant as well. A strategy that endeavours to distance the corporation from an assignee in legal distress pales in comparison to a proactive and effective

risk management stance beforehand.

But yet so few organisations have integrated a mandatory personal liability insurance requirement into their international mobility policies and procedures.

### Beware

Some providers have rushed to market with watered down, 'quasi' international liability products that are at best grossly inadequate, and at worst, borderline fraudulent. Be on vigilant lookout for policies that exclude cover during home leave, or that exclude particularly litigious nations by name.

In an extreme and distressing example, "Exotic nation" liability coverage is now on offer. Such programmes offer no cover in the developed world, and cover only emerging markets and developing nations. Yet somehow, these policies are priced at rates higher than those of a well-crafted global policy.

In fact, emerging markets are the very legal jurisdictions, domiciles and venues where civil trespasses are the least costly. For perhaps a brief period before the impact of globalisation has reached every corner, the lesser developed and more exotic a region is, the more likely it is that civil disputes

might be settled with some element of simple compensation on par with the actual injury sustained by the claimant.

Legal systems overburdened with frivolous, nuisance lawsuits, guerrilla litigators, and punctuated with landmark punitive damage awards and sky-high out of court settlements, are the hallmarks of the capitalised, developed and industrialised northern hemisphere, western economies.

Fortunately, there are abundant viable solutions available from a select roster of reputable providers.

A forward-thinking employer might consider requiring that assignees procure international personal insurance out of a relocation allowance. Alternatively it may elect to be yet more proactive by aggregating and bringing to bear the collective purchasing power of a company's assignee population against the market as an effective means of achieving preferred terms and optimal pricing.

Likewise, Global Relocation Management Companies would be wise to seek out partners and assert their role of industry aggregator and vendor

manager, while DSPs may want to consider querying assignee households about liability insurance and having go-to solutions specifically designed for assignees readily at hand through a simple partnership arrangement.



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insurance industry accumulating experience and expertise both from the perspective of service provider/intermediary as well as that of client/buyer.

TERN Financial Group Inc. has developed an array of novel solutions, innovative products and improved processes that respond to the unique needs of expatriates, relocation industry vendors and their corporate clients to the ultimate benefit of transferees and their dependents. Email [paul@terngrp.com](mailto:paul@terngrp.com) [www.terngrp.com](http://www.terngrp.com)



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