Global Risk Spotlight

Navigating the Nuances of DIC and DIL Clauses

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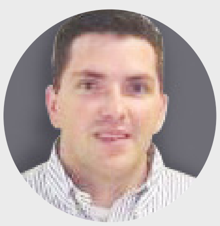
Tom Harris is responsible for leading the Global Services unit and applying Chubb's robust experience, expertise, and infrastructure to support the complex underwriting and servicing needs for all lines of businesses that Chubb writes for large multinational and domestic customers.



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Patric Jones is for responsible for providing counsel and advice to all Chubb business and underwriting groups in connection with the placement, implementation, service and claims involving multinational insurance programs, including all related compliance and regulatory issues.

Difference in Conditions (DIC) and Difference in Limits (DIL) clauses are commonly included in global master programs as a means to bring consistency to a multinational program's coverage terms and limits worldwide. They are particularly useful as part of a Controlled Master Program (CMP), which pairs a master policy issued in the insured's home country with locally issued policies, with varying terms, conditions and limits, around the globe. The overall concept of a DIC clause is simple: If a claim occurs in a country where a local policy is in place, but its terms do not respond to the claim, the DIC feature enables the master policy's broader coverage to respond to the claim. Similarly, if a claim occurs in a place where the local policy's limits are exhausted, the DIL feature enables the master policy's higher limits to respond. While in theory the concepts can be simple, in practice, their application can be complex and claim situation dependent.

A Valuable Safety Net

To illustrate the value of these features, consider environmental coverage. Multinational companies often purchase environmental insurance locally to comply with the rules, regulations and insurance requirements of specific jurisdictions. When they do, including DIC/DIL coverage on the parent's master policy can serve to 'level set,' enabling the broader coverage terms and limits of the master policy to apply when the local policy's terms, conditions or limits may not.

Know the Limitations

DIC/DIL clauses can be valuable additions to a multinational program, but there are limitations.

First, in order for these clauses to potentially respond, local policies must be in place–and that's not always possible or desirable. Thus, where there is no local policy there is no opportunity for DIC/DIL clauses to respond. This is one reason it is important for insureds to carefully consider the purchasing of local policies, especially in countries where non-admitted insurance is not permitted.

DIC and DIL clauses are important tools to instill consistent, efficient coverage for operations around the globe.

Second, in some countries, most notably the BRIC countries (Brazil, Russia, India and China), non-admitted insurance is not permitted; only carriers licensed in that country may issue policies and certificates of insurance, so DIC/DIL clauses generally cannot respond directly in these jurisdictions. Where non-admitted insurance is prohibited, unlicensed carriers can face substantial fines and penalties (even jail time) if they are found to have conducted the business of insurance locally–including investigating and/or paying a claim under a non-admitted master policy. And, contrary to the move toward globalism we see in other industries, rules permitting non-admitted insurance are becoming more restrictive around the world.

Third, even if local policies have been issued, local rules and regulations may impact how, if or when a local policy can trigger DIC/DIL coverage under a master policy. With approximately 195 countries in the world, each with their own insurance laws, regulations–and rules that constantly change–understanding precisely how a multinational insurance program will respond to losses is challenging, but essential for an efficient and efficacious global insurance program.

Claims-Related Considerations

When DIC/DIL coverage is triggered, complex claims issues must be navigated as well, including who can manage and investigate the loss locally.

Where a claim is paid–if done inappropriately–can have serious ramifications. DIC/DIL clauses should always articulate how or where a claim must be paid if the insurer is not licensed or permitted to pay in the jurisdiction where the loss occurs. Insurance licensing and tax related implications must be seriously considered prior to a claim payment in a foreign jurisdiction. In places where non-admitted insurance is permitted, restrictions (and penalties) are generally less applicable but still merit thorough consideration.

Along with keen knowledge of the rules and regulations of claim handling and payments in foreign jurisdictions, multinational companies should ensure that their carrier has ready access to licensed adjusters and claims personnel locally to ensure a swift, compliant and effective local response to a claim when needed.

Understanding how and where to pay claims triggered by DIC/DIL clauses can be complicated and merits careful consideration.

Examining Chubb Data:[1] Frequency of DIC/DIL Claims

While DIC/DIL clauses are triggered across property, casualty and specialty lines, frequency varies across lines based on multiple factors. For example, these clauses tend to be triggered more often by product liability claims, a reflection of the global mobility of products (and products exposure). For efficiency's sake, companies tend to purchase locally required general liability, auto and professional liability limits, which are typically lower than those of the Master Policy's, making the DIL clause more frequently applicable to claims in these lines.

1 Data drawn from Chubb 2018 and 2019 multinational claims.

30%

DIC/DIL clauses were triggered in nearly 30 percent of all product liability cases and nearly 20 percent of general liability and commercial auto liability claims around the globe, according to Chubb 2018 and 2019 claims data.

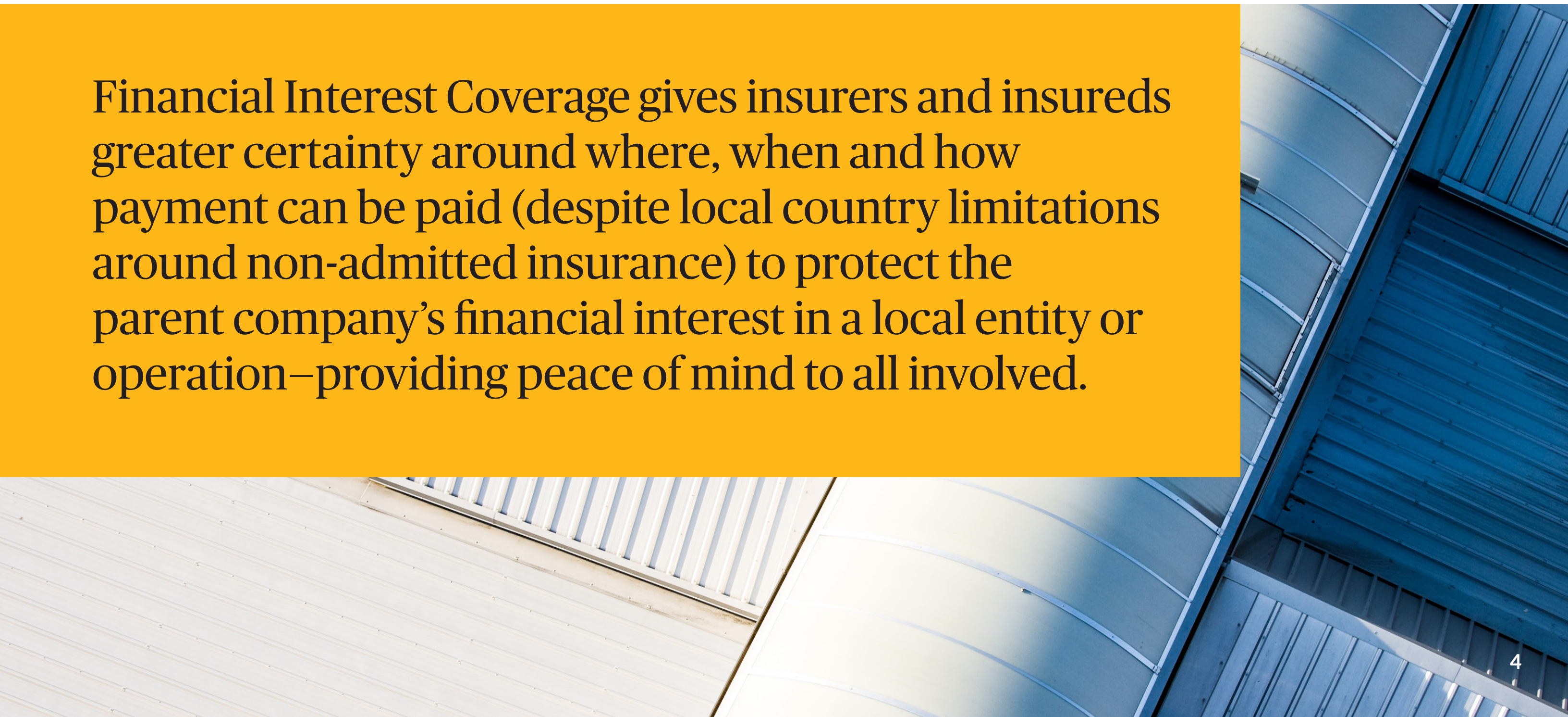
One Final Consideration: Financial Interest Coverage

What if DIC/DIL clauses do not apply to a claim and the multinational's insurer cannot otherwise indemnify the company's foreign operations or loss? For instance, consider a U.S.-based manufacturer facing a products liability loss in Bolivia, where no local policy was issued (because the insured did not purchase one or had no subsidiary there). The company would have no coverage under its U.S.-issued master policy's DIC/DIL clauses, however, in this circumstance, Financial Interest Coverage could greatly assist.

When included on a master policy, Financial Interest Coverage generally enables the U.S. parent insured to submit a claim under the master policy for their financial loss sustained by the loss to the Bolivian subsidiary or operations (assuming coverage for the loss otherwise exists under the master policy and is not covered elsewhere). The U.S. insurer would pay the U.S. parent for the covered "financial interest" loss; payment for that loss would be made by the insurance carrier in the U.S.

While DIC and DIL clauses are critical components of multinational protection, they have limitations as well. Understanding how these clauses can–and cannot–respond in particular jurisdictions is critical to help ensure a fully compliant multinational insurance program.

Financial Interest Coverage gives insurers and insureds greater certainty around where, when and how payment can be paid (despite local country limitations around non-admitted insurance) to protect the parent company's financial interest in a local entity or operation–providing peace of mind to all involved.



Percentage of Multinational Related Claims Triggering DIC/IL Coverage:

Line of Business	% of Total Claims Where DIC/DIL Coverage Utilized
Product Liability	29.6%
General Liability	19.2%
Auto	18.0%
Professional/Financial Lines	17.4%
Property	14.1%
Marine	20.6%

Chubb Global Services is our team of 350 professionals worldwide wholly dedicated to ensuring the smooth operation of each client's multinational program.

Leading the Way, Locally and Globally

Chubb offers multinationals an unparalleled scope of coverage through more than 630 offices worldwide. Our experienced multinational team is dedicated to ensuring the smooth operation of each client's multinational program, locally and globally–from structuring master programs and locally issued policies, to paying claims–ensuring consistent, complaint coverage and excellent service all along the way.

Chubb also leverages technology, including Worldview®, our proprietary online service platform, to elevate multinational risk management and give our customers and brokers greater transparency, certainty and control in managing risk.

Chubb Global Services is our team of 350 professionals worldwide wholly dedicated to serving our multinational customers. The team combines centralized, multinational-dedicated leadership and specialists in local markets who are working for clients every day, issuing policies and playing claims, customizing programs and services, and keeping programs in step with evolving legal and regulatory developments.

Elevating multinational risk management.

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