Insurance considerations for

Canadian business owners

with

U.S. based operations

intact INSURANCE specialty solutions

Doing business across the border

As Canada's largest trading partner, the U.S. is a popular location for Canadian businesses seeking to expand. While expansion into the U.S. can be a great opportunity for growing businesses, the process of searching for the right insurance coverage is no small undertaking. With varying regulations and requirements across each state, the U.S. marketplace can be a complex place to set up shop.

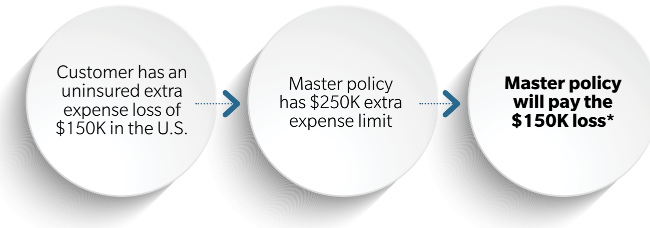
A U.S. policy is usually placed for Canadian based companies with U.S. locations, U.S. incorporated legal entities, U.S. based employees, or U.S. garaged vehicles. Where required by contract, this can also include U.S. contracting operations by Canadian companies. Depending on the coverage involved, the failure to carry U.S. coverage can lead to significant regulatory fines or tax penalties.

Canadian companies expanding into the U.S. have the option to purchase an international master policy, in which the Canadian policy acts as the **Controlled Master Program**, which includes **Difference in Conditions (DIC)** and **Difference in Limits (DIL)** coverage, ensuring that the customer's Canadian coverage will minimize gaps in coverage between the two countries.

Before selecting a cross border solution, it's helpful to understand some of the differences between operating in Canada and operating in the U.S., specifically regarding legal systems and litigiousness; workers compensation, property insurance and auto insurance. Researching these areas in advance can help customers make informed decisions when working with their broker to select coverage that best meets their business needs.

Example: How does DIC work?

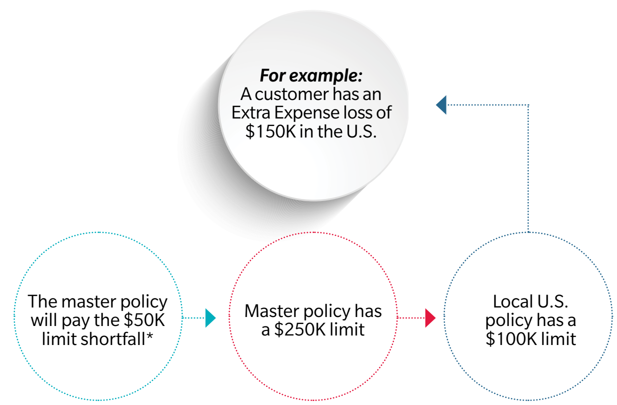
The master will close applicable coverage gaps



*For illustrative purposes only; policy terms and conditions will determine coverage

Example: How does DIL work?

The master will close applicable limit gaps



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A tale of two legal systems

Although there are many similarities between the legal systems in the U.S. and Canada, there are some significant differences.

Statistics show that the U.S. tends to have more litigious activity than Canada. Based on 2016 statistics, a total of $429 billion USD was paid in compensation in the tort system in the U.S.[1] According to the American Tort Reform Foundation, the current top five legally challenging states are: Florida, California, Missouri, New York, Pennsylvania, with legal issues in these states ranging from increasing class action lawsuits to misconduct during trials.[2]

Another key difference to note between the two legal systems is the presence of a jury. In Canada, civil trials are primarily tried by judges and juries are not present. However, in the U.S., juries are very important to both criminal and civil trials in many cases. A jury in a civil trial can impact what a Canadian business operating in the U.S. must pay in damages. During civil trials, plaintiffs can appeal to human compassion and seek empathy from jurors. For example, the visual representation of a plaintiff showing up to court in bandages can sway a jury and encourage a final ruling of a defendant paying a significant amount in damages. The impact of juries in U.S. civil trials is just one of many reasons that general liability insurance premiums are typically higher in the U.S. than they are in Canada.

Canadian owned businesses may have locations in more than one state so it's important to consider the insurance coverage that could be needed – no matter the state – based on the operation and the potential for lawsuits.

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Workers Compensation coverage

Workers compensation refers to the medical and monetary benefits provided to employees for work-related illnesses and injuries.

In Canada and the U.S., workers compensation benefits typically include: rehabilitation, short-term disability benefits, permanent disability benefits, fatal and dependency benefits and health care[3]. Under workers compensation, both countries operate under no fault compensation, which requires employers to cover all work-related injury costs regardless of fault.

In the U.S., workers compensation is generally compulsory in all states except Texas, however there are exceptions for various employees from state to state. Apart from public entities, Texas employers can choose not to provide workers compensation to their employees. If a Canadian customer expands their business into the state of Texas without workers compensation coverage, they are referred to as a non-subscriber and may be liable to pay out a greater amount in damages to employees in the case of a work-related incident.

Workers compensation is available through private insurers in most states, with a few being "monopolistic", meaning coverage can only be purchased from the state. As a safeguard, there are various state-specific regulatory requirements that private insurers must adhere to or financial penalties may be applied.

In addition, because most Workers' Compensation in the U.S. is written by private insurers, there is a subrogation risk from these insurers against product manufacturers (i.e. industrial machinery) that is not seen in Canada and can greatly affect loss experience. In some cases, a loss can continue for a very long time, with benefits paid for the lifetime of an injured employee if a settlement is not reached.

Canadian customers can work with their U.S. broker to choose a state-regulated workers compensation insurer for the state(s) in which they are operating.

Property Insurance considerations

While many property insurance considerations are similar on both sides of the border, such as liability, contents, equipment, etc., there is one area with significant differences: catastrophe coverages in the event of natural disasters.

In 2019, insured losses amounted to more than $20 billion in the U.S., as a result of natural disasters[4], in contrast to $1.3 billion in Canada[5].

The geography of the continental U.S. exposes the country to a wide range of climates and it's also susceptible to variety of different natural disasters, including earthquake, flood, fire, tornadoes, hurricanes and even winter storms.[6]

The U.S. insurance marketplace response to this is a little different than Canada's, in that there are several government programs in place offering coverage options to the public, such as the National Flood Insurance Program and coastal state wind pools (state-mandated risk-sharing programs that offer insurance to cover wind and hail damage in states prone to hurricanes, such as: Alabama, Florida, Louisiana, Mississippi, North Carolina, South Carolina and Texas).[7]

Earthquakes are another common catastrophe in the U.S., and they are not just limited to the west coast. In the U.S., earthquakes are not covered under a standard insurance policy; coverage is available as an endorsement or as a stand-alone policy, vs. Canada where it's not commonly purchased but when it is, it's typically included with a P&C policy. In addition, sub-limits for both earthquake and flood are common in the U.S., as opposed to the full-value limits in Canada.

Climate and susceptibility to a catastrophe are important considerations when it comes to determining the type of coverage that a business needs. Furthermore, a company operating multiple locations in different parts of the country may consider different types of coverage based on the location's climate and its exposure to natural disasters.

Auto Insurance considerations

In Canada and the U.S., auto coverage typically includes physical damage, owned and non-owned liability and specialty coverages. Third-party liability is also compulsory in both countries. However, there are a few notable differences.

In the U.S., owned, hired and non-owned auto are usually covered on one form, and coverage is provided using numeric coverage symbols. Depending on how this is displayed on policy declaration pages, it may appear confusing, compared to Canadian auto policies. These coverage symbols can also be referenced in some U.S. contracts with third parties. Auto forms, while also filed, are not statutory in the U.S., providing more coverage flexibility than in Canada. Some states require electronic filing of vehicle coverage.

Some other notable U.S. differences include:

- The ability to apply a bodily injury deductible to liability;
- A built-in pollution exclusion is standard, but coverage can be endorsed;
- For transportation companies, owner-operators are not insured for liability on the company fleet policy when not driving under dispatch. Owner-operators may purchase non-trucking insurance separately (AKA bobtail coverage) for this exposure.
- Primary liability limits are generally kept low, $1 million or $2 million, with higher limits provided by Excess or Umbrella policies.

These differences present a wide range of considerations, depending on the types of vehicles used by each customer's operation.

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Summary

Canadian customers setting up shop in the U.S. have a lot to consider when it comes to insurance coverage, and the key points presented here are not the only important factors to look out for. While there are many similarities between Canadian and U.S. insurance coverage, it's important to acknowledge the potential exposures within the U.S., based on the specific type of business operation, its location, how the potential exposures may impact profitability, as well as the costs to have the right insurance solution in place.

An insurance solution that offers flexibility and addresses coverage and limit gaps on both sides of the border can help sustain peace of mind and contribute to a successful and profitable cross border business.

Customers seeking to learn more about cross border coverage for their business should speak with their insurance broker. Brokers may contact their Intact Insurance business development manager if they have any questions about the cross border solution available at Intact Insurance.

The Intact Advantage

- We are a North American Insurer and Canada's largest home, auto and business insurance company.
- We are rated A+ (Superior financial strength).
- We provide tailored coverage solutions, products and services for specific industry segments and distinct customer groups.
- Loss prevention consultation is available to customers as a value-added service.
- 24/7 claims service is available to help get customers back on track.

For information about the Intact Insurance Cross Border Solution, visit **intactspecialty.ca**.

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