



Tuesday, October 21
9:00 am-10:30 am

407 International Insurance Law

Allen V. Craig

Partner

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Michael T. Grimes

Senior Counsel

CIGNA International

Claudia Hennecke

European Counsel

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Susan Katz Hoffman

Shareholder and Chair, ERISA Group

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Faculty Biographies

Allen V. Craig

Allen V. Craig is a partner with Growling Lafleur Henderson LLP in Toronto. He practices exclusively in the area of employment and labor relations on behalf of management and in all areas of employment law in both the public and private sectors. Mr. Craig acts as counsel and advisor to clients on the day-to-day resolution of workplace and employment relations matters, emphasizing a proactive approach to maximize the achievement of client objectives and minimize the risk of adverse response to managerial initiatives in the workplace.

Mr. Craig regularly appears before commissions and tribunals on both a federal and provincial level in matters pertaining to human rights, pay equity, and employment standards. He also provides counsel and advice on matters pertaining to wrongful dismissal, workers compensation, workplace safety and insurance matters, as well as providing employment and labor relations advice with respect to mergers, restructuring of business, and outsourcing.

Mr. Craig received his MBA and JD from the University of Windsor.

Michael T. Grimes

Michael T. Grimes is senior counsel for the North American operations of CIGNA International's Expatriate Benefits Unit in Claymont, DE. In this capacity, he provides legal advice to the sales, underwriting, marketing, client management, finance, and claims operations units on issues involving international insurance, regulatory compliance and privacy. More specifically, Mr. Grimes focuses on issues relating to ERISA, HIPAA, PIPEDA, COBRA, OFAC, FCPA, creditable coverage requirements, currency control laws, fiduciary liability, international insurance law, tax totalization treaties, and offshore insurance issues. His areas of responsibility also include day-to-day contracting and transactional work, reviewing marketing and sales literature, drafting responses for requests for proposals, and providing legal direction for benefit-related claim issues.

Prior to his current position, Mr. Grimes worked as senior counsel in CIGNA Corporation's member claim litigation unit, managing and overseeing medical, life, accident, and disability benefit litigation across the United States.

Mr. Grimes is a graduate of the University of Florida and Temple University School of Law.

Claudia Hennecke

Claudia Hennecke is legal counsel for CIGNA International Expatriate Benefits (CIEB) and is based in CIGNA's Glasgow, UK office. Ms. Hennecke is responsible for legal and compliance matters arising throughout all European jurisdictions CIEB operates in.

Prior to joining CIGNA, Ms. Hennecke worked in private practice for a Scottish law firm in both Glasgow and Edinburgh.

Ms. Hennecke is a qualified as a Scottish solicitor and German Rechtsanwältin and speaks German, English and French fluently. She holds a MA from Glasgow University specializing in commercial law.

Susan Katz Hoffman

Susan Katz Hoffman is a shareholder with Littler Mendelson and the chair of the firm's ERISA group, working in Philadelphia. A fellow of the College of Labor and Employment Lawyers and a charter fellow of the College of Employee Benefits Practitioners, Ms. Hoffman concentrates her practice in the areas of employee benefits litigation, employee benefit plan design and administration, and employee benefit issues in corporate transactions. She has represented plan sponsors, prototype plan sponsors, institutional trustees and investment managers, employer associations, multiemployer plan trustees and insurers.

Ms. Hoffman has served on American Bar Association committees and task forces involving merger and acquisition issues, prototype plan design, welfare benefit plan regulation, and regulation of plan investments. She is chair of the fiduciary responsibility subcommittee of the ABA's employee benefits committee (tax section), and previously served as chair of the ABA's employee benefits committee (employment law section). In addition, Ms. Hoffman has served as chair of the Massachusetts Bar Association's employee benefits subcommittee (labor law committee).

Ms. Hoffman received a BA with honors from Lake Forest College and a MBA with distinction from the University of Pennsylvania Wharton School. She is a graduate, cum laude, of the University of Pennsylvania Law School.

INTERNATIONAL INSURANCE LAW

SUSAN KATZ HOFFMAN

OVERVIEW

- **APPLICABLE US LAWS**
 - ERISA, COBRA, HIPAA
- **THE CANADIAN LANDSCAPE**
 - INS. COMPANIES ACT, PART 13, HEALTH v. EMPLOYMENT LAWS, BENEFIT ELIGIBILITY CONTINUATION
- **EUROPEAN ASPECTS**
 - EU INS. LAWS, FREEDOM OF SERVICES, RECENT CROSS-ATANTIC COOPERATION
- **GLOBAL LEGAL ISSUES**
 - CURRENCY CONTROL LAWS, OFAC, FCPA

INTRODUCTION

Benefit Plans (International and Domestic – Canadian & US):

- **Complex (Insurance, Benefits, Labor, Tax)**
- **Insurance Industry - *Highly Regulated***
- **Multiple Analyses Required**
 - “Location, Location, Location” - of employer, employees, dependents, vendors (e.g. TPAs)
- **Usual False Assumptions:**
 - leaving employees on domestic plan enables employers/plans to avoid host country laws
 - relationship with offshore insurer enables employers/plans to avoid home or host country laws
- **Bottom Line: Fact Sensitive Analysis Required**
 - Chart Regulatory Influences

ERISA

- ***Employee Retirement Security Income Act of 1974 (ERISA)***
 - Welfare Benefit and Pension Benefit Plans
 - Insured and Self-Insured Plans
 - Preemption! (e.g. Employer as Agent)
- ***Applicability of ERISA Welfare Benefit Plans***
 - Definition (*Benefits/Beneficiaries/Funding/Procedures*)
 - Applicability - Irrelevant What Plan Document States
- ***Non-ERISA Welfare Benefit Plans***
 - Plans “maintained” outside of the US (29 USC §1003(b)(4))
 - Maintained has 2 components - plan decisions, payment of benefits
 - “Primarily” for benefit of individuals “substantially” all of whom are non-resident aliens
 - % vs. Raw Numbers

ERISA

Obligations and Requirements:

- **Plan Administrator/Plan Sponsor Responsibilities**
 - SPD/SMM/SAR/Form 5500/Appeals Procedures
- **Fiduciaries**
 - Definition - Type (named, functional, de-facto)
 - Responsibilities
 - Best interest of plan participants
 - standard - reasonable/prudent person
 - Potential Liability
 - No indemnification permitted (insurance is permitted)
 - Identity of plan administrator
 - Co-Fiduciary liability

COBRA

- **Amendments to ERISA**
 - **Continuing Coverage** – health (dental?, vision?)
 - **Duration & Premiums Payment**
 - **Qualified Beneficiaries** - Separating Employees and their Dependents
 - **Qualifying Events** – for Employees, for Spouses, for Dependent Children
 - **Elections & Waivers**
 - Who's and Are They Binding?
 - **Ineligibles**
 - Non-Resident Aliens with No "U.S.-Sourced" Income
IRC § 4980B(g)(1)(C); Treas. Reg. §54.4908B-3

HIPAA

- **Amendments to ERISA**
- **Privacy** – “Minimally Necessary Rule”
- **Pre-Existing Conditions Limitations**
- **Prior Creditable Coverage Offsets**

International Insurance Law Purchasing International Health Benefits -The Canadian Landscape

Allen V. Craig

Jurisdictional Considerations

The Division of Powers Between Federal and Provincial Jurisdictions

- Federal Jurisdiction
- Provincial Jurisdiction
- The Realities of Hybrid Health/Welfare Insurance

Health Insurance

Public Health Care Insurance

- Funding
- Coverage

Private Health Care Insurance

- Funding
- Coverage

Insurance Companies Act, Part XIII

Insurance of Risks in Canada

- The entitlement of a foreign entity to insure in Canada
- Review of Federal Legislation
- 2007-01 – Advisory - Office of the Superintendent of Financial Institutions Canada.

Employment Insurance

- Income Replacement
- Funding
- Coverage Eligibility
 - for example:
 - layoff
 - pregnancy/parental leave
 - illness
 - employment termination

Pension Benefits

Public Pension Benefit

- Canada Pension Plan
- Funding

Private Pension Plans

- Define Contribution
- Define Benefit
- RRSP
- Funding

Workers Compensation

- Coverage
- Funding
- Benefit Entitlement

Benefit Eligibility Continuation Beyond Termination of Employment

Employment Standards Legislation

- Statutory Benefit Continuation Eligibility

Common Law Benefit Continuation Entitlement

- Inapplicability of Employment at Will
- Reasonable Notice
- Consequences of Cancelling Insurance During a Reasonable Notice Period

Labor Relations/Collective Agreement Considerations

Collective Agreement Provisions

- Employer insured/sponsored health and welfare programs
- Union insured/sponsored health and welfare programs
- Specific collective agreement responsibilities as to insurance continuation
- Related employer/successor employer implications

**International Insurance Law
European Aspects**

Claudia Hennecke

European Insurance Law

- European Union => 27 member states
- Differences in national laws and regulations
 - Local laws
 - Local regulators
 - EU Directives and Regulations =>harmonisation

European Insurance Law

Provision of employee healthcare benefits for expatriates

- Multiple jurisdictions involved
- Licensing requirements
- Specific Country requirements
- Mandatory Healthcare Systems
- Insurance Regulation
- Brokers: Insurance Mediation Laws

European Insurance Law

How do insurance companies provide services across the EU?

- Freedom of Establishment => local branches
- Freedom of Services

European Insurance Law

Freedom of Services

- Application process
- Supervision
 - Home state=> prudential supervision, solvency requirements
 - Host state => compliance with local laws and regulations, consumer protection

European Insurance Law

Specific country requirements

- Life-time cover
- Continuation options
- Additional benefits/ restrictions on exclusions
- Information requirements
- Mandatory state healthcare systems

European Insurance Law

Country specific healthcare systems

1. France and Belgium
 - Social security systems
 - Top-up plans
2. Netherlands
 - Healthcare reform in 2006
 - Mandatory basic healthcare coverage
 - residents/ non-residents
 - top-up plans

European Insurance Law

Global Aspects of Insurance Regulation

- Closer co-operation between EU and U.S. regulators
- Agreement between New York State Insurance Department and German regulator BAFIN signed
 - Exchange of information between regulator
 - Protection of policyholders

European Insurance Law

Brokers

- Insurance Mediation Directive =>Harmonising laws across Europe
- Registration process
- Minimum standards
- Allows brokers to operate across EU
- EU Insurance companies: co-operation with registered brokers only

Global Benefit Plans: Legal Issues for Global Employers

Michael T. Grimes

Overview

- **Office of Foreign Asset Control (OFAC)**
 - - Benefit Dollars Out of U.S.
- **Host Country Laws**
 - Benefit Dollars Into Host Countries
- **Foreign Corrupt Practices Act (FCPA)**
 - UN & Member Nation Treaty
- **Recommended Approach to Implementing International Benefit Plans**

Office Of Foreign Assets Control (“OFAC”)

- **U.S. Dep’t of Treasury** - administers and enforces economic trade sanctions against:
 - Targeted Countries
 - Specially Designated Nationals (“SDNs”) - Terrorists
 - International Narcotics Traffickers
 - Facilitators of Weapons of Mass Destruction
- **Authority**
 - Presidential Wartime and National Emergency Powers
 - Legislative Authority
- **Applicability** – all US Corp and their Foreign Subs
- **Scope** – “rolling list” / cannot send \$\$ in or to
- **Penalties** – includes jail time
- **Options** – request exemption
- **Additional Information:** www.ustreas.gov

Plan Design

Host Country Laws

- **Execution of contract**
 - Inside or Outside country
- **“Local” Coverage Requirements**
 - Japan, China, Middle East (Saudi Arabia, Abu Dhabi), Ukraine, Cayman Islands
 - Visa Issues for Expats, TCN's
 - Applies to Key Local Nationals (KLN's)
- **National Health Systems**
 - Europe, Australia (Regulated v. Non-Regulated Members)
 - Reciprocal Agreements
- **Mandates & Local Methods**
 - Swiss Canton (Spa Treatments)
 - Canada (“Equality Requirement”)
 - Educational Training v. Medical Treatment
- **Currency Control Laws**
 - Registration with Central Bank, e.g. Brazil

Foreign Corrupt Practices Act & Other Anti-Bribery Laws

What is the FCPA?

- U.S. Statute that provides a comprehensive ban on the bribery of “Government Officials.”
- Purpose - To halt the bribery of foreign officials and restore public confidence in the integrity of American business
- Bribes do not have to be direct & can be made by intermediaries.
 - *Willful blindness, conscious disregard, etc. are not defenses. Due-Diligence and financial controls are required.*
 - *What is largest red-flag? Over-Inflated (excessive) commissions.*

FCPA & Other Laws

What Does The FCPA Do?

- Prohibits corrupt payments to foreign officials for the purpose of obtaining or keeping business (or securing an advantage).
- Requires publicly traded companies in U.S. to meet certain accounting standards (designed to operate in tandem):
 - *Maintain accurate books & records – how is a bribe recorded? Accurately?*
 - *Establish and maintain an effective system of internal controls to account for transactions and assets.*
- Mail and Wire Fraud Statutes and the Travel Act may also apply

FCPA & Other Laws

Who are Government Officials?

- Defined very broadly
- Includes all levels, not just highest ranking
- Can include employees of or those acting on behalf of government owned/controlled entities
- Officials seeking office

Are All Payments To Government Officials Illegal?

- No!
 - FCPA provides for limited lawful circumstances
 - Routine government actions ok (permits, licenses, etc.)
 - Reasonable travel & entertainment

FCPA & Other Laws

Who Does The FCPA Apply To?

- *FCPA potentially applies to any individual, firm, officer, director, employee, or agent of a firm and any stockholder acting on behalf of a firm.*
- **Issuers** – *corporations that have registered securities, i.e., publicly traded*
- *Domestic Concerns – Individuals (citizens, nationals and residents) and companies in the U.S.*
- *Foreign Nationals*

FCPA & Other Laws

Who Enforces the FCPA & What Are The Penalties?

- **Enforcement:**
 - *U.S. Department of Justice*
 - *U.S. Securities Exchange Commission ("SEC")*
 - *U.S. Attorney General*
- **Penalties:**
 - *Criminal (fines up to \$2 million and 5 years imprisonment)*
 - *Civil (disgorgement of profits, plus specific dollar fines ranging from \$5k to \$500k)*
 - *Loss of licenses*
 - *Prohibitions on contracting with the U.S. Government*
 - *RICO or other Federal or State actions.*

FCPA & Other Laws

Other Anti-Bribery Laws

- OECD Convention
 - All EU Countries, Australia, Brazil, Canada, Chile
 - Japan, Korea, Mexico, New Zealand, Turkey and U.S.
 - Caused FCPA amendments – i.e., added “undue advantage” – compare to “giving something of value”
- UN Convention Against Corruption
 - 97 countries signed in 2004, as of 1/20/07, 140 countries have signed.

FCPA & Other Laws

What to Look For? Red Flags

- Unjustified/excessive/inflated payments
- Incidents of non- or last-minute disclosure
- Side-bar Agreements
- Travel & Entertainment expenses
- Offshore shell companies
- Third-party foreign bank accounts
- Trust your gut – unusual requests

Recommended Approach

Implementing Global Benefit Plans:

A Five Step Approach

(1) Chart Your Regulatory Influences

Research/analyze funding, fiduciary obligations, host country coverage laws

(2) Review Worldwide Capabilities

- *Worldwide Operational Capacity – 24 hour service / evacuations & global “urgent care”*
- *Global license base – relationships with local insurers*
- *Compliant activities*

(3) Insist upon a “host country” compliant insurer

- “Location, location, location” – of people, of processing and of data

(4) Get References - Review List of Clients

(5) Don't Go It Alone!