



Foreign Clinical Trial Liability Insurance

Although significant worldwide drug and medical device R&D activity remain within the United States representing close to 50% of total worldwide expenditures, over the last 10-15 years a clear trend toward globalization has emerged. Many would argue that cost is the primary factor driving this development but research suggests that other key factors are contributing as well, including:

- 1. Increased levels of R&D activity:** In 2009, over 2900 new drugs and medical devices were either in clinical trials or under FDA review for approval. This represents a 52.6% increase over 1999 levels. In addition, *VOI Consulting** estimates that it would take 5.8 years to fully enroll all open phase 3 cancer trials if only U.S. sites were utilized compared to only 1.9 years if foreign sites were incorporated into the study.
- 2. Lower enrollment rates in developed countries:** Only 7% of trials in the United States start on time. In the United Kingdom, 30% of all sites fail to recruit a single patient, and 70% fail to meet enrollment targets.
- 3. Larger trials:** Research reveals growing patient totals per trial. According to LEEM, there has been a 40% jump in the number of patients enrolled per trial between 2006 and 2008.

As a result of these and other factors, many drug and medical device companies are looking overseas to supplement or substitute for U.S. based studies, and Western Europe is no longer the only destination. New countries including China, India and various South American countries are emerging as preferred foreign site locations. These countries offer the ample patient populations, faster enrollment and less stringent regulatory environments necessary to initiate and complete effective clinical testing. It is currently estimated that 50% of all pivotal clinical studies contain data from foreign trials and over the past several years the total number of FDA regulated sites in Central and Eastern Europe have increased by 16%, 12.1% in Central America and 10.2% in Asia. During the same time period enrollment in North America and Western Europe declined by 5.2% and 6.1% respectively.

In addition to the myriad of legal, cultural and social challenges that exist when conducting global clinical trials, there are important insurance and risk management issues that must be identified, understood and addressed as well. These include:

The Growing Trend toward Local Admitted Coverage

Separate insurance policies may be required in each country in which a clinical site is located. These "locally admitted, compulsory" policies must be placed with insurance companies domiciled and licensed locally ensuring that coverage limits and terms comply with country specific laws and regulations which are constantly shifting. In most cases, domestic drug and device companies will maintain a "global master" clinical trial liability policy. These programs, usually underwritten by major domestic carriers including Chubb, ACE, CNA, Berkley and Medmarc are designed to provide primary coverage, often on a "blanket" basis, for all clinical trials located in the United States and Canada as well as in foreign jurisdictions where "non admitted" coverage is accepted. In situations where a locally admitted policy is required, the domestic global master program should be structured to provide excess (DIL) and difference in conditions (DIC) coverage over the local foreign placements ensuring that coverage meets generally accepted U.S.A limits and scope of coverage. Leading insurance markets for local foreign coverage vary widely, with Lloyds, Alliance, Gerling and QBE leading the way. Since a major foreign market deterioration in 2002 caused primarily by an economic slump, poor claim results and increased reinsurance costs, conditions overall have improved significantly. In addition to these major players, a wide variety of other local foreign markets exist as well, though in some cases these markets have unapproved security ratings adding risk to the placement.

Evidence of Insurance Coverage (Certificates and Policy Copies)

Be aware that evidence of insurance coverage, usually in the form of a certificate will be required well before the start date of the trial to verify appropriate coverage in filings with local institutional review boards (IRB) and ethics committees (EC) and in some cases actual policy documents may be required. As such, it is important to allow sufficient time for your broker to procure the required coverage, and to make necessary policy adjustments to avoid a delay in filings and trial start dates. This includes local foreign placements where the need for sufficient time is particularly true. Understand the cancellation and premium refund conditions of each policy in the event that the trial is significantly delayed or cancelled after policy placement and premium payment.

Policy Modifications

Be alert for specific policy language adjustment requests from Ethics Committee members, IRB's and/or CRO's. This is particularly true on foreign local placements. The most common of these include removal of coverage exclusions for medical malpractice related claims, AIDS/hepatitis, mercury, invasive products, genetic damage and patient injury resulting from protocol deviations by the principal investigator. These requests can often be satisfied, but they need to be identified and negotiated with insurance underwriters prior to binding coverage. It is also important to understand and address any unique coverage or logistical issues that may exist on local admitted policies. For example, premiums must be paid prior to binding coverage in India and In Nepal, if the drug shows efficacy during the trial the sponsor may be required to provide the drug to clinical trial patients well after the close of the trial and in some cases for the remainder of their lives. These are just two examples of the many subtleties that can exist with foreign local policy placements.

Contractual Issues

Scrutinize Contract Research Organization (CRO) and Clinical Site agreements with your attorney and insurance broker before execution. Focus on indemnification language and insurance requirements pertaining to all parties and ensure that the CRO and clinical sites maintain both appropriate insurance coverage as well as adequate limits. This is particularly true for the CRO which should maintain professional liability coverage (E&O) designed to cover the CRO for both harm to clinical trial patients and resulting consequential (monetary) loss to the sponsor resulting from CRO negligence. Seek additional insured status whenever possible and secure certificates of insurance legally evidencing the coverage before the trial begins. Avoid cumbersome insurance requirements to be imposed on you and as a drug or device clinical trial sponsor do not agree to carry professional liability coverage (E&O). Finally, keep insurance limit requirements to reasonable levels and appropriate for the phase and scope of the trial. These requirements are often negotiable, but the issues must be identified and addressed early.

Drug Supply Storage and Transit Issues

Finally, carefully consider drug supply issues that may require unique insurance coverage. If the foreign trial(s) will require the shipment and storage of high value drug compound it may be prudent to place a supply chain property policy or "stock throughput program" specifically tailored and designed to provide coverage for drug product while in transit and while in storage at any worldwide locations, often including loss resulting from spoilage or contamination.

In closing, numerous factors are leading drug and medical device companies overseas to conduct clinical trials. If the associated ethical, regulatory and risk management challenges are managed properly the sponsor, patients and host countries all stand to benefit.

For more information on clinical trials, contact the Life Sciences team at William Gallagher Associates at info@WGains.com or at 888.261.8884.

**Statistics from "The Case for Globalization – Ethical and Business Considerations in Clinical Research" VOI Consulting, July 2009*

[CLICK HERE FOR A QUOTE](#)