

Corporate Lifeline™

Corporate Lifeline™ is a new coverage for life science companies and their executives faced with increased government scrutiny of company practices under the Foreign Corrupt Practices Act (“FCPA”) and similar international anti-bribery laws. The FCPA makes it illegal for companies and officers to pay “anything of value” directly or indirectly to “foreign officials” for the intended purpose of influencing them in some official act or to secure any improper advantage in order to obtain business. Integrated with Berkley Life Sciences’ comprehensive and forward-thinking LS Prime® liability policy, Corporate Lifeline™ covers pre-claim and other expenses associated with an FCPA inquiry or investigation.

Resurgence of Enforcement Against the Life Science Industry

In 2009 the Criminal Division of the U.S. Department of Justice (“DOJ”) warned that “in the months and years ahead,” the DOJ would focus on “the application of the FCPA to the pharmaceutical industry.” Since that time, the DOJ and the Securities and Exchange Commission (“SEC”), have kept this promise. Numerous life science companies have been the subject of an investigation, requiring companies large and small to spend millions of dollars to respond to an FCPA inquiry. These costs are often incurred even where no prosecution has been initiated, or claim made against a company.

Unique FCPA Exposures Life Science Firms Face

Because the government is involved at almost every stage of business in the pharmaceutical, medtech and biotech industries, it is not surprising that the government has zeroed in on FCPA enforcement. Each time a company with international operations has a government touchpoint, there is an FCPA risk:

- ✓ Government approvals are required in advance of clinical trials, as well as commercialization.
- ✓ Many of the health care providers conducting the trials may also be employed at a government hospital, thus potentially qualifying as “government officials” under the FCPA.
- ✓ Customs officials are often engaged in the process of importing and exporting drugs and products.
- ✓ Employees with any sales function, including the promotion of drugs and products to physicians and pharmacists employed by government hospitals, present clear FCPA risks.
- ✓ Ongoing government oversight is required after a drug or product is launched.

Key Features of Corporate Lifeline™ Coverage

FCPA investigations typically commence with an informal governmental inquiry or the self-reporting of a violation (In fact the DOJ and SEC have explicitly stated that they will treat companies that self-disclose more favorably). D&O policies may not cover FCPA violations, and even broadly worded policies often require the assertion of a claim as a condition to coverage. Corporate Lifeline™ helps you manage the expense of an FCPA investigation where your D&O coverage falls short.

- ✓ Covers pre-suit response costs associated with an FCPA investigation or inquiry even in the absence of a claim.
- ✓ Protects the company as well as executives/employees under investigation (similar to D&O “Side A” coverage).
- ✓ Covers third party consultants, contractors and others that you agree to defend from an FCPA investigation.
- ✓ Covers the expenses associated with the self-reporting of an FCPA violation – even in the absence of a governmental inquiry or claim.
- ✓ Coverage is primary to your D&O coverage allowing you to respond to any FCPA investigative scenario without unnecessary delay.
- ✓ Covers not just the FCPA but other international anti-bribery laws such as the broadly worded U.K. Bribery Act.
- ✓ Extradition and Release Coverage addresses reasonable and necessary expenses related to an extradition proceeding against the executive or employee, or to seek the release of an executive or employee from foreign confinement, as a result of a violation of a foreign country’s corrupt practices laws.

For more information about Corporate Lifeline™, contact your Berkley Life Sciences underwriter.

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