

BUSINESS INSURANCE

D&O Policies Cover FCPA Claims, But Wordings Vary

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Coverage for Foreign Corrupt Practices Act claims is generally available under directors and officers liability policies.

But while specialized FCPA coverage is available, it has not been widely taken up, largely because of its expense, experts say.

Adrian C. Azer, counsel with Haynes and Boone LLP in Washington, said, "The insurance industry generally has been easing requirements for language in those policies to allow for broader coverage."

Rob Yellen, New York-based executive vice president of Willis Towers Watson PLC's FINEX North America practice, said, "We definitely have carriers offering broader investigation options generally than before, so the wordings do seem to have been getting better in terms of what they offer."

D&O policies are written on varied forms, so differences exist, including in the definitions of claim and loss and whether "there are specific endorsements or exclusions relating to various types of enforcement actions," said William G. Passannante, a shareholder with Anderson Kill P.C. in New York.

For instance, loss definitions can have numerous exceptions, such as for penalties or restitutions, which can become an issue, said Joseph M. Saka, of counsel at law firm Lowenstein Sandler LLP in Washington. Litigation between insurers and policyholders is "not a high-occurrence event," though, said Kenneth H. Frenchman, a principal with McKool Smith P.C. in New York.