

LACEY ACT AND INSURANCE QUESTIONS

What insurance is available for Lacey Act enforcement actions?

Coverage is available under two approaches. First is repayment by the insurer for loss or damage to your physical goods by government agencies. It's likely that seizure or confiscation of your imported goods will cause an acute financial impact on your company.

Second is cost of legal defense should criminal prosecution occur. With legal costs quite excessive, it is critical for the company, its corporate directors, officers and employees to receive funding for defense against criminal or civil enforcement actions arising from alleged Lacey Act violations. Along with the defense costs, limited criminal fines, penalties or civil fines will also be covered.

What insurance is best to address the seizure of my goods by a government agency such as CBP?

A policy of insurance that will cover physical loss or damage of goods while in transit or in storage is most practical. Another can be political risk insurance which will require a change in terms to allow U.S. territory protection.

How much insurance is available for Lacey Act defense?

The limit options are many, but immediate limits are available from \$1,000,000 up to \$10,000,000.

May I use my own attorney for defense?

Yes, with written consent of the insurer. However, the insurer will assume the duty to defend any liability claim with counsel that is experienced with management liabilities that arise from government regulations.

Why isn't this insurance offered by everyone?

Insurers have several limitations when defending against government enforcement. Existing insurance policies such as General Liability Insurance focuses on bodily injury and property damage liability, unsuited for Lacey Act enforcement. Crime Insurance limits coverage to theft of corporate-owned goods and money. Marine Insurance can address physical loss or damage to goods, but fail to address legal defense of the company or its employees. An obvious hurdle is insurers' unwillingness to encourage moral hazards – importation and handling of unlawful goods. Another hurdle relates to exclusions which bar funding of defense. Lacey Act points to fraudulent acts, which insurance policies exclude. However, believing that corporations and individuals are innocent until proven guilty our insurers have allowed coverage against seizure of goods and legal defense and criminal fines and penalties.

What is the procedure for obtaining a premium indication for Lacey Act legal defense?

Simply [click](#) on Shorepoint's Lacey Act Defense and Criminal Fines Insurance premium indicator on the Lacey Act page. Completing four quick questions will result in a premium indication with instructions to proceed further if desired.

I already have Executive Liability insurance coverage. Why buy this policy?

See “Why isn’t this insurance offered by everyone?” Shorepoint’s program has special endorsements that specifically address the Lacey Act and overcome an insurer’s reluctance to defend against government enforcement of criminal actions.

What specific coverage is afforded me through the Shorepoint Lacey Act Defense program?

- Entity Coverage – This expanded policy feature will pay on behalf of the company all loss that the company is legally obligated to pay, subject to the terms and conditions of the policy. The policy is structured to respond to suits naming only the company without requiring coinsurance. Company liability may arise from shareholder, competitor, supplier, customer, government agencies, and other third party claims.
- Employment Practices Liability (EPL) – The program includes expansive EPL coverage with one of the broadest definitions of Employment Practices Wrongful Act available in the marketplace today. An Employment Practices Wrongful Act includes but is not limited to twelve separate and distinct employment exposures including discrimination, harassment, and wrongful termination. The bodily injury exclusion is amended for EPL claims.
- EPL-Only Retention – On selected accounts we will eliminate the retention for all claims other than employment practices claims.
- Duty to Defend – For no additional premium, we will modify the policy to provide duty to defend wording. With this wording, the insureds will be allowed to reassume the defense of a claim upon written approval by the insurer. Costs of defense will continue to be included within the limit of liability.
- Broad Definition of Employees – Past, present, future, part-time, seasonal, and temporary employees are all included as insureds. Employment practices claims also include any claim brought by contract employees, including leased employees and independent contractors. We include Third Party Liability Coverage for Business Practices Wrongful Acts, such as harassment and discrimination.
- Punitive Damages – Our definition of loss includes punitive or exemplary damages, the multiple portion of any multiplied damage award in any claim, if such damages are insurable under law, and includes most favored venue wording. This broadening feature does not contain sublimits or coinsurance.
- Fiduciary Liability Coverage – This optional coverage can protect insureds against claims for a wrongful act constituting a breach of fiduciary duty in the operation of any employee benefit plan of the company or in the administration of any welfare benefit plans of the company. It also includes violation of HIPAA (Privacy).
- Other Coverage Enhancements – Outside directorship liability, an expanded notice of claim, spousal coverage, broad definition of claim (including written demands and EEOC proceedings), no SEC exclusion, no major shareholder/ family exclusion, low retentions.