PRUDENT
THE FUTURE OF INSURANCE

Liability Claims Takeaways

MARCH, 2025

The 50TH Edition


CONTRACT

CONTENT

A short history of takeaway from claims

My first memory of an insurance claim was as a 12-year-old child, watching an uncle negotiating with a surveyor to include changing the left headlight of his one year old car. When the surveyor objected that only the right headlight was damaged, my uncle picked up a brick and threw it at the left headlight proudly declaring that now even the left one was. Despite this memory being a bit fuzzy, I do recall being confused about what was going on and staring wide-eyed as the surveyor reluctantly agreed to clear the claim.

Insurance claim...hmmm.. a strange creature ! Very disconcerting! Must avoid at all costs- these are some of the thoughts that stayed with me.

Many years later, starting my career in the insurance industry, I got my first inside view of claims. Claim guys appeared to have phenomenal liking for papers, files, and so many questions. Exhausting!

More seriously, whilst for other aspects of insurance business were trying to get closer to the customer by way of more branches, agents, franchisees, POS, and the likes , claims were centralised at the head office or in 4 or 5 zonal offices (which would then service the branch offices). The unsaid message being, we will come to you for business but you have to come to us for claims. Even 20 + years since, although we have improved a lot as an industry, the design is not too different.

Few years into the industry, being guided into the world of liability insurance by some really kind and accomplished leaders, I experienced something unique and nearly alien. I met a reinsurer where the underwriter and claims person would frequently travel together for business meetings, with prospects & clients in India. At least in my world, this was the first time when claims were being represented in person during a business discussion especially for a line of insurance where there were not many past events.

Surprisingly these business discussions with claim handlers were significantly more engaging and central to customer experience.

During the mid 2020's, the liability claim reporting started to gain momentum and in next few years, accelerated at a great speed. So did the number of professionals, specialising in liability claims.

Despite the ever increasing trend, data/ insights warehousing around liability claims remained fragmented and the entire ecosystem was deprived of real claims scenario and the way insurance policy responded. In my initial experiences with liability insurances, all we saw in business slides were either claims of companies in USA or the handful of Indian example, such as Satyam, Union Carbide, and some employment related claims in the technology sector. This had to change and our customers were asking for more.... more data, more relevant situations, more of what mattered to them for taking informed decision.

Liability Claims Takeaways (LCT) started as an initiative, 50 months ago to provide insight into this otherwise very esoteric world.

Collecting hundreds of claims examples and then selecting, analysing and sharing the ones that get published has been an extremely enriching journey for our team. Let me share how this exercise has helped and hopefully there will be some practical takeaways for you too. As our team sifts through the multiple claims examples, we look for areas of improvements that would have improved the insured's claims experience. These learnings are subsequently shared in an open forum, with our liability team on regular basis. Following this, the learnings find application in areas such as risk submission and in advisory communication with the insured.

To execute this consistently and diligently for 50 months has been simple but not easy. The consistency and diligence is driven by our desire for continuous improvement or, as the Japanese call it, Kaizen (good change). This has to be the key to delivering LCT not only for our clients but for the entire ecosystem.

LCT has enabled many discussions with customers, peers, industry practitioners, insurance students, and academicians. Regular feedback from the insurance community has been the source of nourishment which has helped this initiative bloom.

From where we are today, here are my aspirations as well as predictions for liability claims management:

1. Over time our industry will improve significantly at taking inputs from claims and give differentiated results in renewal proposition. We will go beyond recent claims ratios and declared corrective measures but be able to understand and evaluate the currently difficult to quantify risk philosophy of an organisation.

2. Claims management exercise will regularly be conducted alongside and right after placement of policy, instead of, after an event.

3. Customer experience with liability claims will be distinctive, as templatised and distant claims management will become unacceptable for informed clients.

In the end, thank you for your readership. Do continue to share your ideas, criticism, and assist the evolution of the liability claims community.

Tanuj Gulani
(National Head - Liability Lines)

Foreword

It is like a walk down the memory lane.

We started the liability claims takeaways in January 2021. It was an idea, a faith – that businesses in India are expanding and with expansion, comes risks. Third-party interface for running a smooth business is always on the rise and when more people work together, liability is likely to arise.

Here comes liability insurance - shield that protects balance sheets and prevents erosion of financial stability. Whether it be the risk of a large verdict or rejection of a large batch of goods, liability policies have stood the test of time and been with the organisations at their time of need.

When we started the liability claims department at Prudent, we realised that there was a heavy reliance on Western examples when explaining liability claims in India. Largely so because while incidents were occurring in India, there was hardly any centralised repository where such incidents and claims could be read about. Here began the idea of putting together a monthly dossier of claims arising under liability policies.

In the last 50 months, we have been publishing real-time, case studies of incidents and claims under liability insurance policies. Whether it is a securities class action or a product liability claim, we have seen and shared with our readers a vast number of claim scenarios, the complications, the issues, and the solutions.

The feedback received has also been equally overwhelming, whether it be from insurers, loss adjusters, consultants, clients or students. We have been fortunate to have amazing well-wishers join us in our journey.

As we bring about the special 50th edition of Liability Claims Takeaways, we want to thank our readers for their constant encouragement. It is the fuel that keeps us going.

We invite you to all to this special edition where we take a walk down the memory lane with some key learnings from our past editions and some new ones. We have been fortunate to have received contributions from various stakeholders in the insurance industry, who have become a part of LCT.

Happy reading!

Jyoti Krishnan
General Counsel &
Head - Liability Claims

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TAKEAWAYS

Liability Policies

1. A **claims-made policy** covers first made against the insured and reported to the insurer during the policy period.

2. An **occurrence form policy** covers all claims arising from any occurrence that takes place during the policy period, irrespective of when the claim is made.

3. **Timely intimation** of a claim is not just good practice but a key condition of the policy.

4. Any circumstance that may reasonably give rise to a claim should be **disclosed to the insurer** prior to the renewal/placement of the insurance contract.

5. All costs claimed under the policy must to be agreed upon and incurred only after receiving **prior written consent from the insurer.**

6. Losses must be **substantiated with appropriate documentation** to prove both the quantum and explanation.

7. Costs incurred in defending a claim, must be **reasonable and commensurate** with the expected liability.

8. Any **settlement** of a claim under an insurance policy must be made only **with the prior consent** of the insurance company.

9. The **insurer's subrogation and recovery rights** against third parties must be protected by the insured unless waived in the insurance contract.

10. If part of a claim is covered and part is not, the insurer has the right to **allocate the claim between the two categories** and pay only what is covered under the policy.

11. While the insured has the onus to prove coverage, the insurer bears the **burden of proof** to establish the **applicability of an exclusion.**

12. **Non-disclosure of material information,** including known circumstances or claims at the time of policy placement/renewal, may entitle the insurer to cancel the policy.

13. If a single incident results in multiple claims, all such claims may be treated as a **single claim** and subject to a **single deductible** under the policy.

14. It is advisable to keep the policy primary and non-contributory to avoid the interface of other insurances bought by the same entity (that may cover the same loss) with a possibility of multiple insurers getting involved, and confusion over which policy to trigger.

Directors and Officers Liability Insurance

A D&O policy covers **liability** (whether legal or via settlement) and **defense cost incurred by/on behalf of the directors and officers** of a company due to an alleged or actual claim arising from their actions or omissions in their official capacity.

EPLI coverage under a D&O policy (or a separate EPLI policy) covers liability (whether legal or via settlement) and defense costs incurred by/on behalf of an entity arising directly from an actual or alleged employment practice violation.

Securities cover under a D&O Policy covers liability (whether legal or via settlement) and defense costs incurred by/on behalf of the entity as well as the D&O for any claim arising in relation to sale, purchase or issuance of securities of the policyholder entity.

15. While a D&O policy typically covers individuals, in two situations, **employment practice liability insurance claims (EPLI) and securities claims, the entity is also covered.**

16. If an impleaded D&O is found **guilty,** the insurer is entitled to claw back the reimbursed costs for that D&O or deny reimbursement altogether, while continuing to reimburse costs for other non-guilty D&Os.

17. **Criminal penalties** are generally not covered by insurance due to public policy considerations.

18. **Advancement of Defense Cost** is a critical provision to ensure that defense cost can be paid / reimbursed by the insurer while the underlying claim and liability is being determined, which typically takes time.

19. **A carve-back for the defense costs** is a critical add-on in most cause-specific D&O exclusions.

20. Typical exclusions in a D&O Policy are:

    - Loss arising from bodily injury and property damage subject to carve back, if any.
    - Loss arising out of prior pending litigation claims or known matters.
    - Loss arising from pollution subject o carve back, if any.
    - Loss arising from fraudulent or dishonest act of insured person, subject to final adjudication.
    - In case of an EPLI claim, any statutory benefits, wages, bonus and contractually assumed liabilities are not covered.

Professional Indemnity Insurance

A PI policy covers liability and defense costs incurred by the company in the event of a claim alleging a breach of professional service, including both technology products and technology services.

21. The policy covers the cost of defense, **not prosecution.**
22. A PI policy should provide coverage to **both entities and employees** to ensure comprehensive protection.
23. Including a **continuous cover clause** during renewal can help avoid the repudiation of otherwise covered claims solely on the ground of intimation after the expiry of the policy period.
24. **Refund of fees** should be included in the definition of damages or loss (as the case may be) to ensure that one of the most common types of PI claims does not fall outside the policy purview.
25. **An outstanding fee endorsement** can help effectively utilise a PI policy in the event of a claim from a client who has withheld fees payable to the insured.
26. A PI policy should include coverage for actions, errors, and omissions of the insured's **subcontractors.**
27. The **business description and/or services** provided by the insured should be described widely and adequately in the policy to ensure comprehensive coverage.
28. **Mitigation cost** cover is critical in a PI policy as many times, costs to avoid a claim are much economical than the cost of defending a claim or settling one.
29. Typical exclusions in a PI Policy are:
    - Loss arising due to infringement, misappropriation of patents or trade secrets.
    - Financial injury due to insolvency, bankruptcy, etc.
    - Loss arising from claims made against insured and in their knowledge prior to policy inception.
    - Loss arising due to bodily injury/property damage with carve back for duty of care for professional services.
    - Loss resulting due to contractually assumed liability, which did not exist otherwise.

Cyber Insurance

A cyber policy covers **first-party and third-party losses** suffered directly by the insured due to a covered cyber event. First party losses include forensics, incident response, crisis communication, data breach notification, business interruption loss, to name a few. Third-party losses are more in the nature of liability to third parties due to a claim made against the Insured. This includes damages, award, court order, settlement, credit monitoring costs, ransom etc.

30. Intimation to CERT-in within 6 hours of discovering a cyber incident is mandatory for all companies in India.

31. In case of a cyber event, **incident** response is the most important and immediate step entities should take.

32. **While payment of ransom** itself is not prohibited in India, the manner of payment may become questionable and therefore hiring third-party expert consultants to navigate the nuances of ransom payment is advised.

33. **Engaging experts** such as **breach counsel, forensics partner, legal adviser, public relations advisor, and data privacy advisor** can help mitigate losses and control the impact of a cyber-attack.

34. For companies handling a lot of **personal data, in addition to forensics and legal advice, data privacy advice, credit monitoring, and web monitoring** become critical covers under a cyber insurance policy.

35. **Business interruption losses** under cyber policies typically restrict themselves to a **reduction in net profit. However, some insurers also cover additional cost of working and identified fixed costs.**

36. Cyber policy usually **does not cover** costs incurred to improve the insured's system beyond their state prior to the cyber incident; only costs to mitigate losses from a covered cyber event are covered.

37. Typical exclusions in a Cyber Policy are:
    - Loss arising due to infringement, misappropriation of patents or trade secrets.
    - Financial injury due to insolvency, bankruptcy, etc.
    - Loss arising from claims made against insured and in their knowledge prior to policy inception.
    - Loss arising due to bodily injury/property damage with carve back for duty of care for professional services.
    - Loss resulting due to contractually assumed liability, which did not exist otherwise.

Commercial Crime Insurance

Crime insurance protects the insured against losses suffered due to **employee fraud as well as certain identified third-party crimes.** While all direct losses arising from an employee's dishonest actions are covered in the Crime Policy, in the case of third parties, specific crimes like on premise and in-transit theft, forgery, fraudulent alteration, computer fraud are most commonly covered under the policy.

38. Filing a **police complaint** in the event of a crime is expected from an insured as a good faith action.

39. All steps must be taken to get the **First Information Report (FIR)** registered after filing a complaint with the police. This not only helps the investigation but also helps prove the occurrence of the crime and its modus operandi.

40. Any crime must also be **investigated internally** by the insured. This could be done within the company or by engaging external parties, ensuring transparency of process and clarity of the steps taken.

41. Losses to the insured entity due to **repeated actions of an employee** who has committed a crime previously and caused a loss are not viewed favourably under a crime policy for coverage.

42. In the event of a loss under a crime policy, the insured must **withhold any amounts payable to the perpetrator** (whether employee or a third party) as soon as the loss is discovered and suspicion falls on the perpetrator.

43. Most insurers in India today do not provide cover for **inventory losses.** While many have added an absolute exclusion, some only cover losses for employee fraud and not for third-party crimes.

44. Social engineering fraud is becoming very prevalent among organisations and includes within its ambit, **such as vendor fraud, and CEO fraud.**

45. Typical exclusions in a Crime Policy are:
    - Loss arising due to infringement, misappropriation of patents or trade secrets.
    - Financial injury due to insolvency, bankruptcy, etc.
    - Loss arising from claims made against Insured and in their knowledge prior to policy inception.
    - Loss arising due to bodily injury/property damage with carve back for duty of care for professional services.
    - Loss resulting due to contractually assumed liability, which did not exist otherwise.

Commercial General Liability Insurance

A CGL policy covers **liability and defense costs** for the insured entity for all claims of **bodily injury or property damage** arising due to an **accident** on the insured premises or from the insured's business . The policy also covers **medical expenses** for third-party injuries due to an accident on the insured premises from grounds up **without any deductible.**

Product Guarantee cover pays for the **cost of replacement, repair,** etc., of the insured's product that has been supplied but fails to perform its intended function and is rejected by the customer.

Product Recall cover pays for the **cost of recalling and storing rejected goods** supplied by the insured that have caused or can reasonably be expected to cause bodily injury or property damage if used by customers.

Financial Loss cover pays for all such **losses incurred by any third party,** which result directly from the supply of the insured's product that fails to perform as intended and is rejected by the customer.

46. The **description of the goods being manufactured, supplied** and/or otherwise being dealt with by the insured and intended to be covered under the CGL policy should be described widely and adequately in the policy to ensure comprehensive cover.

47. A CGL policy usually reimburses **medical** expenses for third-party injuries due to an accident on the insured premises on a **no-fault basis.**

48. **A root cause analysis report in a product liability claim** can at times be the decision maker of claim admissibility.

49. For companies involved in manufacturing, processing, storing, supplying, or trading in goods, **product guarantee, recall, and financial loss** covers in a CGL policy are extremely critical.

50. Typical exclusions in a CGL policy are:

- Expected or intended injury.
- Communicable diseases.
- Claims covered under employee compensation legislation.
- Loss due to bodily injury/property damage suffered by Insured's employees.
- For Product Liability-Products manufactured and/or sole prior to retroactive date.

CLAIMS
KALEIDOSCOPE

CYBER CLAIMS SCENARIOS VIS-À-VIS GLOBAL & INDIAN TRENDS

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Global Cyber Claims Landscape

Globally, ransomware attacks dominate the spectrum of cyber insurance claims as per Munich Re's 2024 insights[1]. Annual ransomware crypto payments surged from $567 million in 2022-23 to $1.1 billion in 2023-24. Other notable attacks include Business Email Compromise (BEC) and software supply chain attacks. Between 2021-22 and 2023-24, BECs resulted in $3 billion in losses and impacted 22,000 victims globally. In 2023, BEC cases doubled, and software supply chain attacks saw a twofold increase compared to the previous three years. These attacks cost businesses $45.8 billion and affected 245,000 incidents[2]. Data breaches in 2023-24, reached on all-time high average cost of $4.45 million per breach[3].

As per Swiss Re's Expertise Publication in 2022-23, cyber risks surpassed business interruptions and natural catastrophes as top concerns, as noted in Allianz's risk barometer. McAfee estimated global cyber-crime costs at $945 billion in 2020, with two-thirds attributed to intellectual property theft and financial crime. The direct costs of cyber incidents in the US have quadrupled since 2016, averaging $100,000 per incident. Ransomware attacks have intensified, with 70% accruing since 2017, and average ransom demands reaching $750,000 in 2021-22. A survey found that 50% of top cyber leaders view ransomware as their greatest risk, followed by social engineering and insider threats[4].

Cyber Claims in India

India mirrors global trends but faces unique challenges due to its growing digital ecosystem. As highlighted by the Data Security Council of India (DSCI), the Indian cyber insurance market is witnessing growth, albeit from a nascent stage[5].

The primary drivers of claims in India are ransomware attacks, unauthorised data access, and phishing schemes. India is also witnessing the rise in individual cybercrimes and a huge amount is getting drained off from individual bank accounts.

Cyber-attacks in India rose by around 200% in 2020-21. From 1,158,208 cases to 394,499 cases in 2019-20, as per the data given by Indian Computer Emergency Response Team (CERT-In) with over 600,000 incidents were reported in the first half of 2021-22 alone. The Indian liability market grew by 33% between 2021-22 and 2022-23, reaching $560 million[6]. In 2023-24, over 40,151 personnel were trained in cyber hygiene, and cybersecurity measures have expanded across sectors[7]. However, the scale of cyberattacks remains concerning. A surge in incidents targeting critical infrastructure, including banking and transportation systems, has been observed[8].

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CLIMATE CHANGE – ARE WE READY FOR THE LIABILITY?

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Climate change isn't just about increasing temperatures, it's about escalating risks that threatens business continuity. From floods to wildfires to mounting regulatory penalties, the liabilities are as unpredictable as they are far-reaching.

Take the devastating wildfires in California as a case in point. These fires are a stark reminder of how interconnected risks can converge to disrupt industries on an unprecedented scale. Entire communities were displaced, critical infrastructure was destroyed, and businesses ranging from vineyards to tech giants faced crippling losses. Data centres, vital to the operations of countless firms, were forced into emergency shutdowns. Without proper backup infrastructure in geographically diverse locations, such disruptions could spiral into catastrophic operational failures. Add to that, there will be significant rise in third party liabilities arising due to these shutdowns.

The situation becomes even more dire when viewed through the lens of geopolitics. Already strained global supply chains mean delays in acquiring replacements or critical assistance. Companies relying on just-in-time delivery or single-region suppliers could find themselves at a standstill, unable to recover swiftly. This in turn will force them to sue their suppliers for breach at their ends.

But the crisis doesn't stop there. Activist groups and investors are increasingly scrutinising a company's ESG (Environmental, Social, and Governance) commitments. Lack of proactive measures to mitigate climate risks invites public backlash, shareholder discontent, and regulatory scrutiny. The question is inevitable: Why wasn't your infrastructure climate-resilient?

What began as a natural disaster quickly snowballs into a cascading crisis fuelled by the interplay of climate change, geopolitical instability, and ESG accountability. This trifecta of risks is no longer theoretical, it's a reality that no organisation can afford to ignore.

Businesses today navigate through unprecedented challenges, and a rapidly evolving risk landscape that's unpredictable and unforgiving. As a Global Risk Manager, I witness daily how devastating climatic, economic, and societal changes are reshaping the risk landscape. The challenges businesses face are no longer isolated they are deeply interconnected and magnified, demanding not just vigilance but foresight.

Questions to ponder:

- How does a wildfire in California ripple across the globe to disrupt a company's operations in an entirely different hemisphere?
- What role can resilient infrastructure play in reducing not just physical damages, but also the financial and reputational fallout?
- How do ongoing supply chain disruptions exacerbated by geopolitical tensions heighten the risk of prolonged business interruptions?
- How will organisations protect themselves from the liability that arises from the impact of such events?
- Climate is but one critical part of the ESG. Are we preparing enough for social impacts of new age developments? GenAI for eg. The lay-offs that shall happen in the short-term before employable workforce learns to upskill to leverage AI and not compete against it. The changing nature of work-force from a tenured employment to project/consultant roles. How do we integrate accountability and governance in such fast-mutating environment?
- Are traditional insurance policies evolving to address interconnected threats and cascading impacts? Can insurance keep pace with the complexities of tomorrow?

The answer lies in innovation, collaboration, and a proactive approach. The path forward isn't about reacting to risks as they arise, it's about anticipating them, preparing for them, and turning uncertainty into opportunity. As climate change, geopolitical tensions, and ESG challenges continue to reshape the world, insurers must evolve to remain not just relevant, but indispensable partners in resilience.

In this interconnected world, the question is no longer if risks will collide - it's when? The time to adapt is now.

CYBER INSURANCE

Author:

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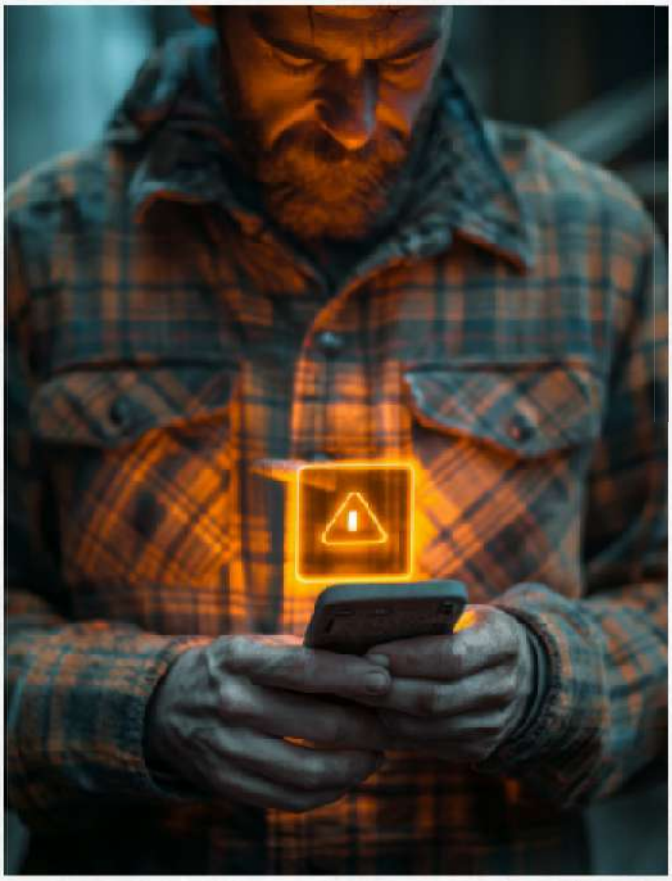
The cyber threat has never been greater than it is today. According to the cybersecurity company Sophos, a ransomware attack costs a company an average of $2.73 million, and the number of attacks is constantly rising.

A key component of a cyber insurance policy is the liability section. It addresses third-party claims arising from cyber incidents. The liability section is designed to protect businesses against financial losses and legal liabilities related to data breaches, network security failures, media liability, regulatory investigations and fines, and privacy violations.

Contrary to first party risk which can be estimated empirically, liability risk is difficult to assess because of the large number of potentially affected third parties and the different types of incidents and situations.



For example, a healthcare provider could experience a ransomware attack that compromises thousands of patient records. Several affected individuals would file lawsuits, claiming negligence in safeguarding sensitive information. The cyber insurance policy's liability section would cover legal defense costs, settlements, and penalties imposed by healthcare regulators. Without this coverage, the financial burden could cripple the organisation.

Another classic example could be a financial institution suffering a phishing attack that exposes client data. Regulators may impose significant fines for non-compliance with data protection laws. The liability section of the institution's cyber insurance policy could cover these fines and provide funds for legal representation during the investigation.

For all these reasons, cyber third-party risk has never been so high for companies, and insuring at the optimum level has become essential for any organisation over the long term.

INSURANCE CLAIMS: PROACTIVE SUPPORT FOR A SMOOTHER JOURNEY

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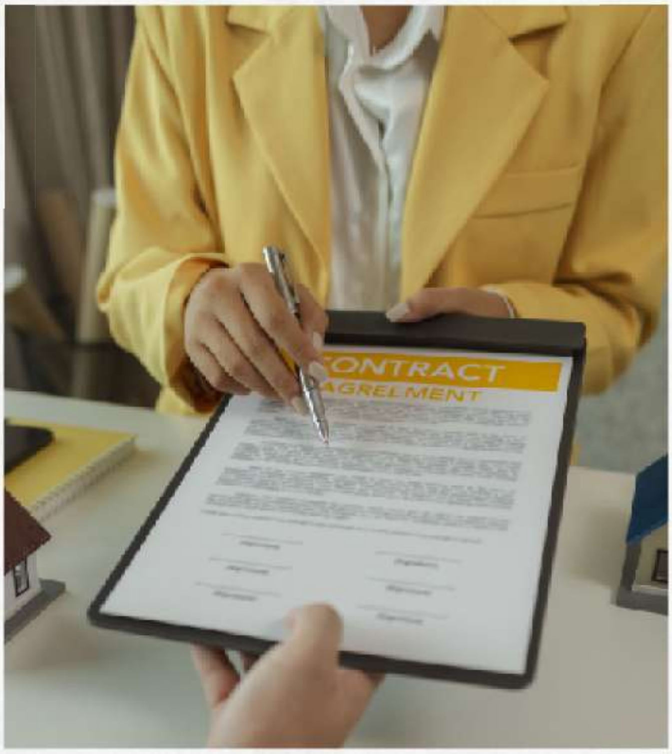
Liability insurance can be a critical safety net for businesses, but understanding and navigating coverage during a claim can be complex and overwhelming. Whether it's public, cyber, directors, or professional liability, clients often face challenges when making timely claims decisions—sometimes with serious consequences. Many clients purchasing liability policies may not fully understand how to activate their coverage when it is needed the most. Likewise, brokers, who serve as the essential guide through the claims process, may struggle to trigger the right responses in a way that ensures optimal support. In high-stress moments, even minor delays can have significant repercussions. The most common challenges that clients face include:

- Claims rejection due to not adhering to policy procedures (e.g., failing to obtain consent from insurers before incurring legal costs).
- Uncertainty about how to access insurers' approved legal panels or crisis response teams.
- Varying expertise and costs among approved vendors, which may deplete policy limits unexpectedly.

At Pacific Prime, we believe that proactive claims support should start well before a claim is filed—ideally from the moment a policy is sold. One of the most effective ways to prepare clients is through claims training, which ensures they know how to react swiftly in case of an emergency. In addition, we offer valuable assistance by shortlisting preferred legal firms and crisis response teams from insurers' approved panels. By considering both industry expertise and competitive pricing, we help clients identify the right support for their unique needs—giving them a clear sense of direction during a crisis.

While insurers provide the insurance, it's brokers who offer the assurance. Our role goes beyond policy sales—we are here to guide, advise, and support our clients every step of the way, ensuring that when the time comes to make a claim, they are well-equipped and ready to act. Insurance is a promise to pay, but it's through the right guidance we fulfill that promise, empowering our clients with the knowledge and confidence they need in times of need.



"GREENWASHING" – THE ARISING D&O THREAT

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From a Directors and Officers (D&O) Liability Insurance viewpoint, most risk surveys for the past few years have stressed ESG as a rising D&O threat. The majority would like to believe that companies that have a clear ESG strategy from an exposure viewpoint and are more oral about their enterprise are generally "better risks" than those that don't. Still, if one were to follow the ESG- related suits trend in the US keenly, it would paint a slightly different picture. One cannot talk about ESG, without touching upon "Greenwashing" as well.

Before we dissect the most pertinent case dealing with "Greenwashing" from a D&O perspective, let's first try to understand what it really means. According to Merriam-Webster's dictionary," Greenwashing" is the act or practice of making a product, policy, exertion, etc. appear more environment friendly or less environmentally dangerous than it really is.

In a global business worldthat is growing more concerned with commercial sustainability, companies are trying to project that their products, programs, or conditioning are more environmentally friendly than they are. For public companies that are governed by securities regulations, similar " Greenwashing" qualifies as deceiving or padding, which may lead to suits by shareholders and other similar concerned parties. This is why "Greenwashing" is a veritably serious and arising D&O threat.

A major US case law about a class action suit filed against Enviva Inc., which claims to be the world's largest patron of sustainable wood bullets that give low-carbon volition to fossil energies. the details of the case are explained below:

1. The plaintiff had claimed that Enviva Inc. had made false and misleading statements and failed to disclose the following:
   i. Enviva had misrepresented the environmental sustainability of its wood pellet production and procurement;
   ii. Enviva had similarly overstated the true measure of cash flow generated by the company's platform;
   iii. Accordingly, Enviva had misrepresented its business model and the company's ability to achieve the level of growth that the defendants had represented to investors; and
   iv. as a result, the company's public statements were materially false and misleading at all relevant times.
2. On October 12, 2022, Blue Orca Capital (investment company specialising in short selling i.e. making money when share prices fall) published a report on Enviva in which they stated, "We believe that Enviva is the latest ESG farce, a product of deranged European climate subsidies which incentivise the destruction of American forests so that European power companies can check a bureaucratic box. In an Orwellian twist, even though burning wood emits more CO_2 per unit of heat generated than any major energy source (including coal), an arcane carbon accounting loophole subsidises European power companies to replace coal with wood pellets derived from deforestation in the United States. All in the name of climate activism. In our opinion, Enviva is engaging in textbook greenwashing."
3. To back their claims that Enviva was engaging in greenwashing, Blue Orca stated the following in their report:
   i. Enviva had stated that they don't resort to clear- slice of timbers (a system that's known to reduce root strength and soil's water holding capacity), in a shot to showcase their environmentally friendly practices. Still, satellite images of GPS coordinates bedded in Enviva's "Track and Trace" database revealed that clearly cutting of timber was taking place, and

Enviva was deceiving investors by trying to conceal this data.

ii. Several interviews with senior officers at Enviva handed perceptivity that Enviva's practices were actually leading to deforestation, as opposed to their claims.

iii. Another red flag mentioned by Blue Orca was the string of high-position exits from Enviva. In this case, three of Enviva's crucial sustainability officers quit within months of each other in 2021. These were high-profile departures, including the Chief Sustainability Officer and the co-author of the company's sustainability white paper. Both were the public face of Enviva's attempt to attract ESG investment, making their departure akin to a CFO and principal account officer relinquishing at the same time. Piecemeal from the below, the report also combated several fiscal representations made by Enviva., still, we will circumscribe the content in this article only to the ESG aspects.

Now, indeed if the company's ESG exposures were proven to be false, would it have a minimum or significant impact on its financial business? Could it lead the company to bankruptcy? The answer to that in the case of Enviva is YES! On studying the business model of Enviva, it's clear that Enviva's customers buy wood bullets from them only on the condition that the company's procurement satisfies global climate regulations that allow its customers to switch from coal to "sustainable forest biomass," allowing its customers to benefit from carbon credits and tax subsidies.

Once their claims are rebutted, Enviva's customers will have any use for wood bullets carried in such a manner. Hence the impact of "Greenwashing" is far and wide, and when this report was published the market drove down Enviva's share price by $7.74 per share, or 13.13%, to close at $51.23 per share.

In their class action suit, the shareholders had claimed that the misrepresentations by Enviva and its executives had driven down the share price and had caused them a financial loss.

A D&O policy is likely to provide coverage for the following:

- **Legal costs:** i.e. defence costs and damages awarded by the court against the individuals.
- **Public relations cost:** In in such publicised cases, companies often need to appoint PR experts to help formulate a strategy of how to communicate with the various stakeholders – i.e. shareholders, regulator and customers. The fees of PR experts may be covered under a D&O policy.
- **Side C trigger:** Since Enviva is a listed company, entity security related litigation costs will also be covered under a D&O policy, in which Side C has been opted for.

It gets a little trickier to understand which exclusions would apply since most D&O policies come with a "conduct exclusion", in which any deliberately dishonest or fraudulent act. However, this exclusion would apply at the time of final adjudication – i.e. once this has been proven in court and there is no further appeal. Till the time the same is an allegation, the policy would continue to provide coverage for it.

While this case is still underway, let's look at some of the learnings for a D&O underwriter from this development:

1. ESG is an emerging D&O risk that is going to take center stage in the coming years. A company that is pro-actively claiming to be ESG focused does not make it a good risk. In fact, it is more likely to be the target of short sellers than others that do not have an ESG strategy.
2. Evolving ESG reporting and disclosure norms are likely to increase liability risks for companies and its management. For example, in November 2022, the SEC announced a settlement with Goldman Sachs Asset Management (GSAM), including a penalty of $4 million, for failing to adopt procedures to ensure compliance with certain ESG claims made to investors by GSAM.
3. Several countries have already started working on "Anti-Greenwashing" regulations. In the UK, FCA has proposed new rules to tackle greenwashing while the EU commission has framed rules that will strengthen consumer protection against untrustworthy or false environmental claims, banning "Greenwashing" and practices misleading consumers about the durability of a product.
4. Look for broad promises in the annual reports. If these disclosures/statements sound too good to be true as compared to other peer companies, they probably are, and sooner or later the regulator/short seller is going to hunt the company down.
5. Currently majority of the ESG related litigation is related to sustainability and climate change, however going forward, diversity and inclusion related issues may lead the next wave of ESG-related litigations.

LIABILITY INSURANCE – AUSTRALIAN MARKET

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The Australian General Liability Insurance market has undergone significant rate remediation over the past five years due to an increased number of worker-to-worker claims. This is a result of companies using outsourced labour specifically provided by labour hire companies and contractors. Workers' Compensation Insurers seek to recover from host employers, when a contracted worker is injured whilst under their control/supervision. Liability Insurers have responded by increasing rates and have applied large deductibles ranging from AUD 25,0000 to AUD 250,000 depending on the occupation.

Social Inflation in relation to claims settlements and the willingness for courts to compensate the aggrieved is a global phenomenon. Liability Insurance rates continue to increase with Australian Prudential Regulatory Authority figures reflecting a continual deterioration in both frequency and claims payments.

Australia has an extremely litigious jurisdiction with a number of litigation funders willing to provide capital for fund class actions. This has resulted in plaintiff lawyers seeking out the defendants with the promise of compensation. Industries specifically affected are religious organisations, health care, allied heal.th, food processing, and stone product manufacturing.

Insurers are mitigating their exposures by declining to provide coverage to certain industries. Due to the employee health issues arising from manufactured stone products; insurers have excluded silica claims. This trend is only expected to continue and we will see how it impacts the overall liability insurance market in Australia.

THE LIFE CYCLE OF A LIABILITY INSURANCE CLAIM

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Behind every successful business is a robust safety net—liability insurance. But what happens when the unexpected occurs? From product defects to accidents, the journey of a liability insurance claim is a vital process that ensures your business is protected, both financially and legally. Here's a closer look at how this process safeguards your company from unforeseen challenges.

Imagine a manufacturer facing a lawsuit after one of their products malfunctions and injures a consumer. A small defect could snowball into significant legal and financial challenges, costly lawsuits, potential product recalls, and possible damage to the brand's reputation.

In this scenario, liability insurance serves as a critical safety net. But how does the claim process unfold?

It begins when the claim is reported to the insurer. Timely notification is essential, as delays can jeopardise coverage. The type of policy- "claims-made" or "occurrence-based" also affects the claim's validity. A claims-made policy covers incidents reported during the policy period, while an occurrence-based policy covers incidents that occur during the policy period, regardless of when the claim is made. As demonstrated in Oriental Insurance Co. Ltd. v. Samayanallur Primary Agricultural Co-op Bank Ltd. (2018), failing to report a claim promptly can lead to denial of coverage.

Once reported, the insurer begins its investigation. A claims adjuster collects relevant facts, witness statements, and incident reports to determine whether the event falls within the policy's coverage. A thorough investigation is critical, as failure to do so, as seen in National Insurance Co. Ltd. v. Harjeet Rice Mills (2019), may result in wrongful denial.

After the investigation, the insurer evaluates the claim, scrutinising the policy's terms, limits, and exclusions. The insurer calculates potential costs for defence or settlement. If disagreements over coverage arise, negotiations or litigation may follow. United India Insurance Co. Ltd. v. M.K.J. Corporation (1996) highlights the importance of accurately interpreting policy terms to avoid misjudgements.

Once the liability is confirmed, settlement negotiations begin. Settling a claim is often quicker and more cost-effective than lengthy litigation. Both parties may agree to a lump sum or structured payments, as demonstrated in New India Assurance Co. Ltd. v. Zuari Industries Ltd. (2009), where a settlement saved both time and money.

Finally, after the settlement, the insurer may close the claim. Some policies require post-settlement review, but typically, the insurer's obligations end once the claim is closed, as seen in National Insurance Co. Ltd. v. Harsolia Motors (2004).

In conclusion, the life cycle of a liability insurance claim is a series of crucial steps that ensure businesses are protected from unforeseen risks—helping them navigate challenges with legal and financial security.

HOW CORPORATE GOVERNANCE FAILURES LEAD TO D&O LIABILITY CLAIMS

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In today's high-stakes corporate environment, a single mistake in governance can unravel years of leadership success, turning visionary decisions into personal liabilities. To mitigate these risks, Directors and Officers (D&O) insurance plays a crucial role. It serves not only as a safeguard, but an indispensable shield for leaders and their organisations.

Corporate governance failures can have dire consequences, exposing directors and officers to substantial liability claims. The D&O liability insurance protects corporate leaders from legal actions resulting from their decisions. However, this coverage can be limited in cases involving negligence or fraudulent actions. Given India's complex business environment, having a robust corporate governance framework is essential to minimise the risk of governance failures that can lead to damaging D&O liability claims.

Notable examples from India illustrate the consequences of poor governance. The Satyam Computers scandal of 2009 stands out as one of the most notorious instances. Chairman B. Ramalinga Raju was found guilty of inflating the company's financial statements, resulting in massive losses for investors and stakeholders. This governance failure led to legal action against Raju and other board members, with shareholders and creditors filing lawsuits claiming that the board members violated their fiduciary duties. The case underscored the critical importance of financial transparency and sound governance in avoiding D&O claims (Sharma & Pandey, 2010).

In another incident, the 2018 ICICI Bank governance crisis involving CEO Chanda Kochhar highlighted the personal liability risks faced by executives. Kochhar was accused of approving loans to companies linked to her family, leading to a conflict of interest and subsequent legal action. The case emphasised that a lack of ethical decision-making and transparency could expose leadership to personal liability, reinforcing the need for strong governance (Rathi, 2018).

More recently, the rapid expansion of Byju's, an Indian edtech giant, has resulted in legal disputes due to financial mismanagement and delayed reporting. Allegations of misusing loans and failing to maintain proper governance practices led to shareholder and creditor claims. This case serves as a warning about the governance risks faced by high-growth companies, especially when corporate structures lack the necessary safeguards to prevent misconduct (Das, 2024).

These examples show that poor governance can have severe legal and financial implications. To safeguard against D&O claims, businesses must ensure their governance frameworks are transparent, ethical, and aligned with the organisation's best interests.

LIABILITY IN CASE OF "DOUBLE INSURANCE"

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It is well established that a contract of insurance is one for indemnity of defined loss and must be construed strictly.

Companies, as a precaution, tend to take more than one insurance policy to cover the same risk i.e. double insurance. Section 34 of the Marine Insurance Act, 1963 **("MIA")** describes 'double insurance' as a scenario where two or more insurance policies are effected by or on behalf of the insured on the same interest (or a part of such interest). Under the MIA, where an assured is overinsured on account of double insurance, the assured inter alia unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, if he is not entitled to receive any sum in excess of the indemnity allowed by the MIA.

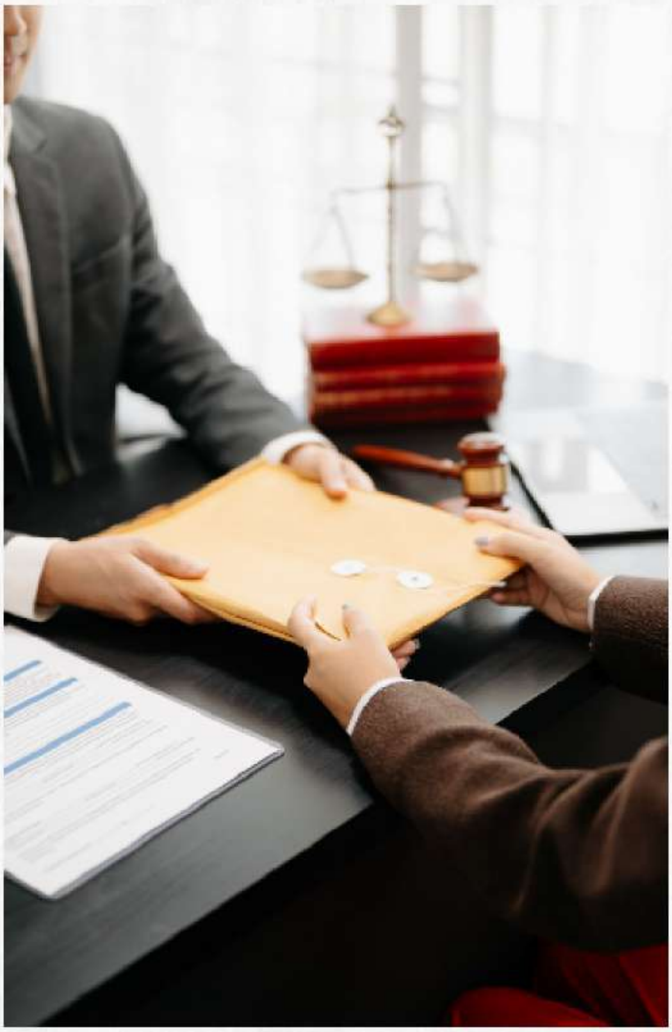
The Supreme Court in the case of United India Insurance Co. Ltd. v. Levi Strauss (India) (P) Ltd. [(2022) 6 SCC 1] ("United Judgment") has observed that double insurance is not frowned upon in law. However, the idea is not to be able to claim the entire loss from both policies.

In Austin v. Zurich General Accident & Liability Insurance Co. [1945) KB 250], relied upon in the United Judgement it has been held that once the first insurer has paid a complete indemnity to the assured, the second insurer would be entitled to decline liability on the ground that he has been fully indemnified. The same has also been held in the United Judgement where the Court has held that "In the case of specific risks, such as those arising from loss due to fire, etc., the insured cannot profit and take advantage by double insurance.

The interpretation of the terms of the insurance policies in such cases becomes relevant, which terms are interpreted strictly [Export Credit Guarantee Corpn. of India Ltd. v. Garg Sons International [(2014) 1 SCC 686)].

A contractual remedy to the issue of double insurance is the 'other insurance' clause which is usually seen in insurance policies. Depending on whether a policy is intended to be primary or in excess and whether it is meant to be contributory or non-contributory, the contractual provision can ease the process of navigating the issue of double insurance for the same risk.

Hence, while double insurance is generally permitted, the terms of the policy are paramount and should provide a complete understanding of the liability in clear terms.



UNDERSTANDING CLAIM COMPLIANCE

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In the realm of liability insurance and claims management, it is pertinent that prudence is exercised by the insured, alongside transparent compliance with policy terms. This is a critical aspect, which allows an insured to ensure coverage of events and avail indemnity under the policy. Among the various provisions, the notification clause stands out as a cornerstone of the insurer-insured relationship, as it ratifies the disclosures provided by the insured, at the time of inspection. This clause requires policyholders to promptly notify insured of an incident or circumstance that may give rise to a potential claim. The wording of the clause may differ, however, in essence, it establishes the requirement to provide disclosures of circumstances, within the policy period, that a reasonable person would consider, may result into a claim.

The debate however, has remained prevalent, as to what are the essential constituents to identity a circumstance, which requires to be reported. As an insured, there is reasonable apprehension under this aspect, where an insured, must tread with caution. Whilst an insured is provided reasonable space to determine discovery or knowledge, however, where such discovery/knowledge is apparent, the delay in notification beyond the policy period, is not capable of being condoned.

Thus, a breach of the notification clause would have significant consequences, potentially leading to denial of claims, as it denies an insurer, with the opportunity to ascertain risk, at the time of inception. Hence, claim notification or notification of circumstance is established as a material disclosure, and allows for the Material Prejudice Doctrine to be applied/invoked. In other words, each insured is obligated to provide and must expressly declare, all material facts associated with the risk, including past claims or circumstances that may give rise to claims in the future. However, there are clauses available within the insurance ecosystem, that would assist such delays to be condoned, if opted for by the insured. These include “Control Group Clause” or “Innocent Non-Disclosure Clause”, which may be considered while incepting a risk.

The Indian industry, is now seeing claims of various genres where frequency and severity is high. Hence, the requirement for insurance professionals to interpret the policy correctly is vital. However, it is noticed that claims professionals are unable to navigate the perils of coverage clauses, erring whilst providing indemnity to the insured. Once such example would be the interpretation of the series clause, which affords coverage for related or continuous events. To ensure this is addressed appropriately, the role of the insurance professional is vital, in identifying common source or interrelation of the circumstances. For instance, repeated acts may have a common source and/or modus operandi, thereby defining it as a singular incident. Alternatively, error in providing services could be on account of separate sources, resulting in independent or discrete events, owing to which series clause may not apply.

Apart from the above, adjusters often struggle with the conceptual dilemma of establishing “legal obligation” under the policy to evidence trigger of the operating clause and afford coverage. The historical paradox required that legal obligation is established vide means of a court order, or judgement. However, this is not consistent with the spirit of the policy, which acknowledges a claim to have been instituted, when a written demand is received from a third party, citing negligence or breach and/or monetary remuneration/damages on account of such negligence/breach. Whilst this remains a concept of debate, for insurers in India, it however, is an aspect that adjusters need to advise on and provide clarity to the market.

WHITE COLLAR CRIME AND THE INDIAN LEGAL LANDSCAPE

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White-collar crime, typically involving non-violent offenses like fraud, embezzlement, and insider trading, has become a growing concern in India's legal and economic environment. These crimes are particularly challenging for the insurance industry due to their subtle nature, often leading to significant financial losses before they are even detected.

The Indian legal landscape has seen several developments to address the rise in white-collar crimes. Notably, the introduction of several agencies having the necessary resources to investigate these complex offences, such as the Economic Offences Wing, and Serious Fraud Investigation Office has strengthened the country's capacity to tackle financial crimes and impose a deterrence on the perpetrators. However, the complex modus operandi deployed continues to be a significant challenge while tackling this segment of crimes.

For the insurance industry, these crimes pose a significant risk, especially in areas such as financial fraud, misrepresentation in claims, and corruption in underwriting processes. One notable example is the Sahara case, where the company was involved in fraudulent activities that impacted millions of investors. While the legal ramifications for the corporate giant were severe, the role of insurers in protecting against such widespread fraud was underscored. Financial institutions, including insurance companies, faced several challenges related to exposure and loss mitigation, as claims related to fraud and misrepresentation were hard to detect without the right coverage in place. This case highlighted the importance of insurers having proper safeguards against large-scale financial fraud. Similarly, cybercrime, including banking scams and data breaches, continues to become a significant concern in the present era. A well-known example is the Yes Bank scam, where perpetrators exploited banking systems to siphon off substantial funds. These cyber-threats—ranging from phishing attacks to unauthorised transfers—pose new risks for insurers and policyholders alike.

With growing corruption and human greed, insurers must remain vigilant and adopt comprehensive measures, including thorough due diligence, employee training, and reliability on evolving technology for advanced fraud detection measures. This is necessary to cover the potential fallout from such crimes, helping businesses mitigate losses from fraudulent activities.

As India's legal framework continues to evolve, it is crucial for insurers to stay ahead of emerging risks to safeguard their clients effectively. In conclusion, the intersection of white-collar crime and India's legal landscape is a complex but critical issue for the insurance sector. By staying informed and adapting to changes in both law and crime tactics, insurers can better protect against the financial repercussions of these crimes.

NUCLEAR VERDICTS DEMYSTIFIED

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The US legal system is very unique in its very own way. A hallmark feature of the legal system is "nuclear verdicts" and " thermonuclear verdicts". "Nuclear verdicts" are large jury awards that exceed $10 million. Interestingly if the jury award is in excess of $10 million up to $1 billion then it is referred to as "thermonuclear verdicts".

In a normal lawsuit, if someone faces a loss then they ought to be compensated reasonably. However, sometimes juries award way more in damages than reasonable and logical. This is what leads to a nuclear verdict, a huge amount of money is awarded in a lawsuit, way higher than the actual cost.

The jury award is way more destructive and harsher as compared to what seems a reasonable compensation. It's not just the amount of the award but the scale of punishment/award. In a simpler language, it's like using a hammer to swat a fly. The reason nuclear verdicts are peculiar is because they are fundamentally unpredictable.

A report published by the US Chamber of Commerce Institute of Legal Reform[1] highlights some interesting trends such as:

1. A key takeaway of the study is that while nuclear verdicts dropped significantly during the COVID-19 pandemic, they rebounded to near their prior levels by the third quarter of 2021.
2. There were a record number of nuclear verdicts in 2022; and the trends of 2023 indicated that this record would be broken soon.
3. Products liability, auto liability and medical liability comprised two-thirds of the reported nuclear verdicts.
4. California, Florida, New York and Texas had almost half of the US's nuclear verdicts. Few other states that make the list are Georgia, Washington, Missouri, and Illinois.

Several factors have led to an increase in nuclear verdicts, including:

1. **Reptile tactics:** Lawyers using tactics to coerce jurors to award damages based on emotions rather than the actuals facts. This approach is consistent with the "Reptile Tactics" explained in the book "Reptile: The 2009 Manual of the Plaintiff's Revolution[2]"
2. **Anchoring:** Lawyers have also been known to use "anchoring" tactics especially for guiding the jurors for exorbitant non-economic damages like pain and suffering; loss of consortium etc.
3. **Multi plaintiff trials:** Lawyers have been known to combine trials even when there is no apparent "common" cause connecting the cases. This is done to hide the weaknesses in the individual cases and also to create confusion in juror's mind.
4. **"Lead generation" and "Third-party litigation funding":** Lead generators will broadcast ads highlighting huge nuclear verdicts in order to influence the jurors into "making it stick" to the companies and award huge amounts in damages. There is also rise in outside investors looking to "invest" into high stakes "lawsuits" to garner "large nuclear verdicts". They get a portion of the award as a return. The rise in third-party litigation funding means more prolonged litigation and also lots of ads to ensure that jurors give large awards. Hence, ensuring a good return on their investment. This can have dire effects on the plaintiff as their interest might not always be protected.

Nuclear verdicts can have significant impact on business such as:

1. **Increase in the cost of products/services:** Rise in nuclear verdicts would eventually lead to an increased cost of litigation for companies. This cost would eventually be recovered by increasing the costs of products or services being offered by these companies.
2. **Increase in insurance costs:** Insurers would vary to offer insurance to segments prone to nuclear verdicts due to the unpredictable nature of the damages. This would mean a disproportionate premium being charged to ensure viability of the insurance business. Further down the road if the trend sustains then there would be very few insurers who would be offering the insurance cover to these segments. Both these factors would lead to an increase in cost of insurance for these segments. Trucking companies in The USA are a prime example of this trend. Due to the rise in nuclear verdicts for "trucking companies" a few insurers backed out from providing insurance to this segment completely[3].
3. Prolonged litigation and inefficiency in the judicial system: Since the gap between the real cost of the loss versus the perceived value of the loss is increasing, hence parties are refusing to settle the cases where they see that there is a good precedence for nuclear verdicts. The prolonged litigation due to the appeals being filed by the defendants for reconsidering the "nuclear verdicts" will lead to unnecessary litigation, reducing the efficiency of the judicial system.

In conclusion, a rise in "Nuclear Verdicts" would be value eroding for the society at large due to fact that it would lead to shutting down of businesses due to rising costs. This would also affect the unemployment rates in certain segments as the business would go bankrupt in case of a mega nuclear verdict.

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