



Liability Claims

T A K E A W A Y S

APRIL, 2025

Welcome to the 51st edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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1 Cyber Insurance

Event Chronology

The insured is an Indian company with its parent company based out of the United States of America. It provided services concerning mass communications and broadcasts across organisations and also facilitated trainings and workshops. While the contracts are signed by the US parent, a large part of the execution was handled by the Indian company using the resources of the Indian company. On a Friday evening, the Indian company's CFO received an email from an unknown threat actor alleging that they had managed to access the systems of the insured and were in possession of personal and sensitive information from these systems. Concerned with this email, the insured immediately reached out to us as their insurance brokers to assist them.



Key Intent of the Claims Case Study

1. Different insurance policies for different companies

The insured, in this case, had historically been buying an insurance cover for the US parent in the United States which purported to cover the Indian subsidiary also. However, upon review of the policy, we pointed out that the US insurer did not extend cover to India as a territory. This meant that a claim arising out of any territory apart from USA for the Indian entity would not be covered. The insured was surprised to know this. Accordingly, we restructured the program to ensure that adequate insurance covers were available to the Indian entity as well as the US entity, for worldwide risks. This also addressed IRDAI and FEMA related issues that existed in the erstwhile structure.

2. Empanelment of consultants

In this case, based on the developing facts it became apparent that both insurance policies would need to be invoked, and one would be in excess of the other. The US policy had pre-agreed consultants for legal advice, forensics, etc, who came to the insured's rescue immediately upon notification. In policies like cyber insurance, where the incident may need a quick response, pre-agreed consultants can shave off several hours, if not days, from the overall time to respond and address the situation.

Highlight

When multiple policies have the potential to trigger cover during a specific incident, it is critical to identify the primary and excess relationship and keep all insurers informed to ensure the protection of the insured's contractual rights.

3. Use of consultant outside the empanelment

In this case, the insured wanted to retain a forensics consultant who was not listed in the policy. While the insurer initially expressed their preference to proceed with only pre-agreed consultants, we were able to convince the insurer that engagement of this consultant would not prejudice the rights of the insured or insurer in any way and would, in fact, expedite matters due to the location and expertise of this other consulting firm. Basis this, the insurer agreed to consider the engagement as an exception.

Prudent: The Part Well Played

Our understanding of both the US and Indian policies, coupled with the ability to navigate the discussions across the consultants allowed the breach counselling to commence within a few hours of the notification being made. Further, we ensured that both the Indian and the US insurers were informed and necessary consent was taken from each insurer for costs that were expected to be covered under their respective insurance policies. This allowed for the policy terms to be adhered to while the insured's cyber threat-related concerns were being addressed.



2 Employment Practices Liability Insurance

Event Chronology

A consulting firm received a complaint from one of their ex-employees alleging wrongful termination. In addition to the allegations concerning the employment related aspects, certain criminal allegations were also made in the complaint including wrongful restraint in the office at the time of the exit interview and exit formalities. Along with the email complaint, a copy of a Civil Suit was also attached, which the ex-employee suggested was being filed against the company and its key stakeholders. The insurer was notified immediately of the matter under the EPLI cover.



Key Intent of the Claims

Case Study

1. What is an EPLI cover?

An Employment Practices Liability Insurance (EPLI) cover aims to indemnify the entity, as well as its directors and officers, for all losses i.e., damages, settlements and defense costs that arise on account of actual or alleged wrongful act concerning employment practices like wrongful termination, discrimination, to name a few.

2. Scope of the Policy

Broadly, the policy covers the following types of losses, in addition to other costs by way of endorsements:

Defense Cost i.e., cost of defending the insured against any claim covered under the policy.

Damages i.e., the monetary award granted as being payable by insured to the claimant as compensation in relation to the allegations raised by the claimant against the insured persons.

Settlement i.e., any settlement arrived at by any insured with the claimant, in accordance with the policy terms and conditions including but not limited to after receiving insurer's prior written consent.

Highlight

The case at hand had multiple proceedings including a civil suit and a criminal case against the officers of the entity. Additionally, there were allegations of bodily injury that had to be addressed as well, within the ambit of the policy. A well worded and comprehensive cover allowed the insured to make a successful claim under their liability insurance.

Prudent: The Part Well Played

We advised the insured to notify the matter to the insurer in time and obtain the necessary consent before proceeding with appointment of the defense counsel. This ensured that the ongoing defense cost was reimbursed to insured persons from time to time, by using the advancement of defense cost cover coupled with a carve-back for bodily injury. This further emphasised the importance of a well-structured and worded insurance policy.



3 Product Liability Insurance

Event Chronology

The insured was a company engaged in the manufacturing of active pharmaceutical ingredients (API) for certain drugs. One of the drugs so manufactured using the insured's supplied APIs was found to have developed certain impurities that resulted in the customers who consumed those drugs developing medical symptoms. Upon diagnosis many complaints of life-threatening diseases were observed. This resulted in a class action being filed against all manufacturers of similar drugs. Accordingly, all suppliers were also impleaded into the said class action.



Key Intent of the Claims Case Study

1. What is Product Liability policy?

A Product Liability policy provides coverage to an insured person for claims filed against them for bodily injury resulting from consumption of their product, as covered by the policy. The policy provides coverage for damages as well as defence costs incurred by the insured or a settlement done, all with insurer's prior written consent.

2. Scope of the Policy

Defense and liability

The policy in question would cover the liability if any, that was imposed on the insured on account of the said class action as well as the cost incurred by the insured, in defending the same.

Retroactive date

Since the insured had purchased the policy for the first time only a few years ago, a question was raised about how the causation would be determined as being within the retroactive date. We used the evidence presented by plaintiffs to demonstrate that the alleged impurity could only have arisen after a certain date, which fell well after the retroactive date, and removed all doubts in this regard.

Highlight

The Product Liability policy has several provisions that help navigate a claim smoothly. It is critical for us, as the intermediary to ensure that the policy covers are comprehensive and are commensurate to the insured's business. Secondly, it is critical for the intermediary to be aware of the policy terms in order for them to be used as needed at the time of making submissions to the insurer.

Settlement of covered and uncovered claims

As is usual in such cases, the settlement was being explored of the matter, and a question arose as to how the parts which were not related to a bodily injury claim would be viewed under the policy and could that result in the entire claim potentially falling outside the purview of the cover. The policy had a clause for allocating any claim between covered and uncovered matters. We used the said clause to impress upon the policy intent of delineating a covered part of the claim from the uncovered part and accordingly the covered portion was considered for payment.

Prudent: The Part Well Played

This claim was ongoing for more than three years. However, there was next to no progress in the matter. After being engaged, the Prudent team understood the case, and created submissions for the insurer. After several rounds of discussions and negotiations, the insurer, who had initially refused to consider this matter as covered, agreed to pay the defense cost on an ongoing basis.



We are sure you found the anecdotes interesting and got some key points to take away.

Stay tuned for the next edition!

About Prudent Insurance Brokers

We, at Prudent Insurance Brokers, provide industry-leading expertise in designing and managing insurance programs to address unique requirements of your organisation. We have a client-centric service infrastructure that delivers proactively & passionately in a highly systematic manner. Our Liability Team consists of members with underwriting experience and the largest number of lawyers who can assist you across different areas:

- Identifying and addressing gaps in your current insurance programs
- Arranging the most cost-effective cover from Indian and international markets
- Ensuring contract compliance for your insurable indemnities
- Offering 360° claims management by one of the largest claims teams across any broker in India
- Providing global solutions through the strongest international alliances



Our Claim-handling Expertise

Our team members come from varied areas of expertise, thereby enabling us to ensure that our clients are assisted thoroughly, through every step of the claims-handling process. We take pride in our professional competency and diligence, and our team is always willing to walk the extra mile in client service.

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