Liability Claims *Takeaways*

AUGUST, 2024

Welcome to the 44th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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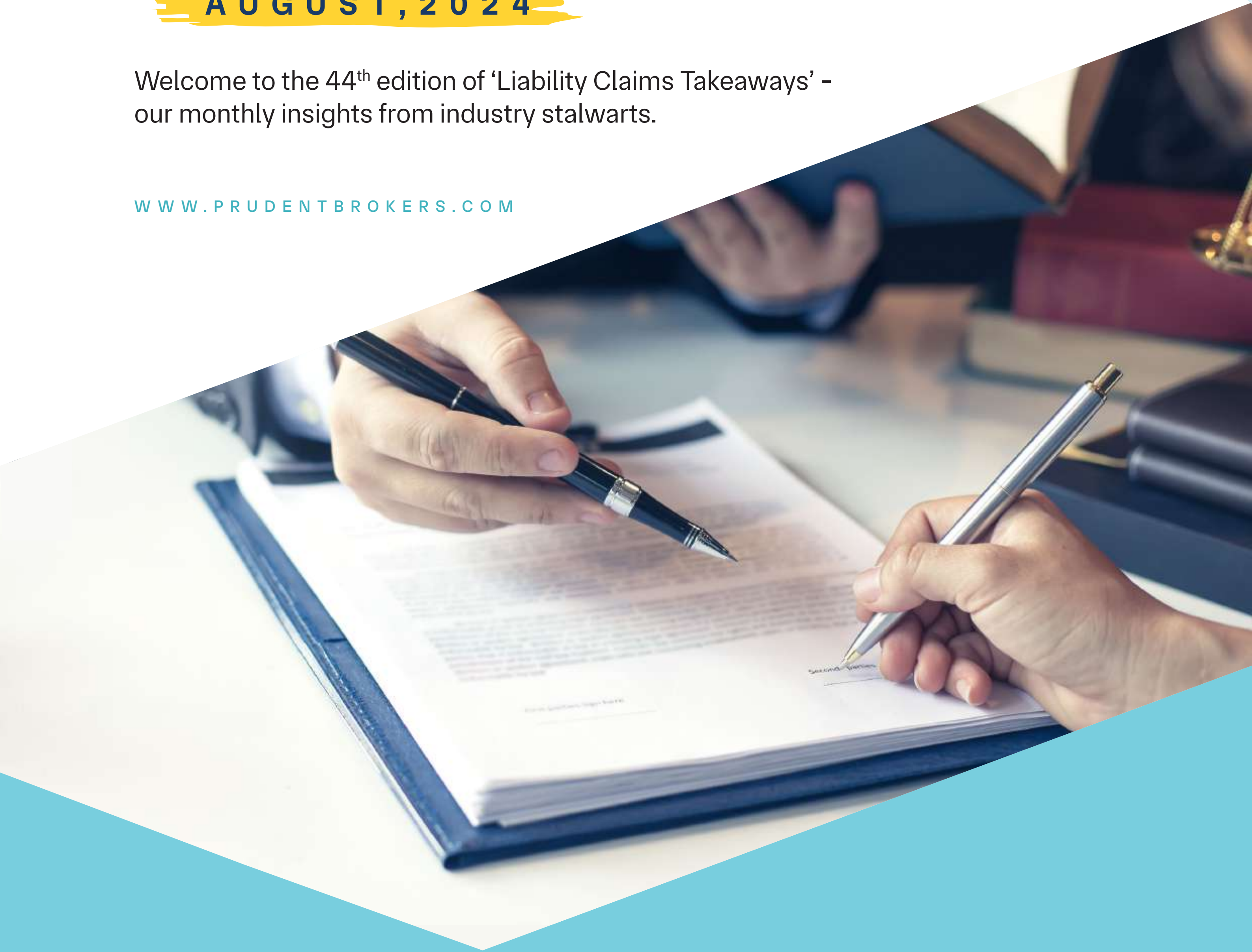

Content:

1. **Commercial General Liability** Policy
2. **Public Liability Act** Policy
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1 Commercial General Liability Policy

Event Chronology

Insured is a renowned chemical manufacturer with manufacturing plants across the country. The process of manufacturing chemicals requires access to large quantities of water. Therefore, the Insured constructed a barrage (small dam) on a river 5 kilometers away from the manufacturing plant. The water was transported to the plant via pipeline and stored in large tanks within the manufacturing plant. During monsoon season, the barrage and the water pipe developed cracks and subsequently broke, causing a flash flood. Nearby properties were completely destroyed due to the water overflow, leading to a claim against the Insured for the damage caused. The claim was notified to the Insurer under the Insured's Commercial General Liability policy (CGL Policy).

Key Intent of the Claims Case Study

What is CGL Policy?

A CGL policy generally reimburses an insured for bodily injury and property damage arising from an accident at the insured premises or due to the insured's operations.

Scope of the Policy

Designated Premises Endorsement

A CGL policy provides coverage for third-party injuries and property damage that occur within the Insured's premises or as a result of the Insured's operations. The Insured's CGL policy contains a Designated Premises Endorsement, which confines the insurer's risk to events occurring solely within the premises specifically mentioned in the endorsement. Any loss that occurs outside the premises listed in the endorsement is not covered under the policy.

Insured: I'd be dam(n)ed!!!

The policy was placed by the Insured directly, without the assistance of a broker, which led to this key piece of information being omitted in the proposal form. After this incident, the Insurer investigated and discovered that a similar event had occurred the previous year. The claim was declined because the Designated Premises Endorsement restricted coverage to events arising within the Insured's premises. Additionally, the Insurer decided to reassess the entire risk portfolio.

The insured's claim was denied because the policy only covered specified premises, and the insured didn't disclose the construction of the dam away from the premises.

Prudent: The Part Well Played

As an insured, it is prudent to declare all aspects of one's business, including any additional risks that one may foresee. In the present scenario, the Insured was aware of the additional risk since a similar incident had occurred in the past. The onus is on the insured to declare all foreseeable risks associated with their business. We highly recommend meticulously sharing information with the insurer when signing up for any business-critical insurance. For policies placed through us, we insist on a comprehensive information check on the insured's end to mitigate any such situations.

2 Public Liability Act Policy

Event Chronology

The Insured was in the business of manufacturing hazardous substances, and as per the requirements of the Public Liability Insurance Act, 1991 (PLI Act), availed a Public Liability Insurance Act Policy (PLIA Policy). While transporting hazardous chemicals from its plant, the Insured's tanker collided with a divider, releasing the hazardous substance into the air. Some locals had to be hospitalised while others were temporarily evacuated as the chemicals had leeched into surrounding water bodies and made the air toxic. Around 32 cattle deaths were reported. Disgruntled locals started protesting in front of the Insured's plant, threatening to vandalise if monetary assistance was not immediately provided. The National Green Tribunal (NGT) took cognizance of the matter based on complaints received from the locals and instructed the DC to gather information about the affected locals and evaluate the extent of environmental damage to the surrounding land and water bodies. The matter was subsequently heard before the NGT, which held the Insured liable under the PLI Act and directed it to pay INR 1.2 crore to the locals for medical expenses and rehabilitation costs, as well as for the cattle deaths. The Insured was also asked to pay INR 3.1 crore for damage to the air, land, and water bodies under the Air (Prevention and Control of Pollution) Act, 1981, and the Water (Prevention and Control of Pollution) Act, 1974.

The insured's claim was denied for damages beyond the Public Liability Act's scope, as the policy only covered liabilities under the PLI Act and didn't extend to other environmental regulations.

Key Intent of the Claims Case Study

What is Public Liability Insurance Act, 1991 (PLI Act)?

Founded on the principle of no-fault liability and pursuant to the Supreme Court's ruling on absolute liability in M.C. Mehta v Union of India (1987), the Public Liability Insurance Act 1991 came into force after the Bhopal gas tragedy. It aims to provide immediate assistance to victims of accidents involving hazardous substances. The 1991 Act regulates mandatory liability insurance for companies involved in the manufacture and handling of hazardous materials, ensuring that immediate relief can be provided to victims and persons (other than workmen) affected by accidents occurring while handling hazardous substances.

Scope of Policy

The PLIA Policy aims to cover an insured against any statutory liability as provided for under the PLI Act and Rules. Therefore, the scope of this policy is restricted to statutory liability arising from the PLI Act and Rules while handling hazardous substances. The policy does not cover liability arising under any other legislation and provides a cap for the liability the Act allows. Since the direction under the PLI Act was within the cap, the Insurer agreed to cover the liability of INR 1.2 crore awarded by the NGT under the PLI Act. However, it declined liability of INR 3.1 crore awarded under the Air Act, 1981, and Water Act, 1974, since the PLIA Policy excludes liability arising from any other legislation. In such cases, other insurances come into play.

Prudent: The Part Well Played

The concept of absolute liability was introduced in India after the Bhopal gas tragedy, and Indian Courts have since been known to come down heavily on manufacturers/handlers of hazardous substances. While the PLIA policy covers risks associated with hazardous substances, the statutory liability is restricted only to the PLI Act. If the Insured is held liable under any other legislation like the Air Act, 1981, or Water Act, 1974, they are left uncovered under the PLIA Policy. We advise clients in the business of manufacturing/handling hazardous substances to obtain additional protection by acquiring policies such as the Public Liability (Industrial) Policy or even a CGL policy, which cover such risks.

3 Commercial Crime Policy

Event Chronology

The Insured, a financial institution, had availed itself a Commercial Crime Policy directly from the insurance company. In the proposal form, the Insured was required to disclose details of safety measures undertaken to combat fraudulent transactions, including the frequency of internal audits and details of cheque signing authority amounts. The Insured disclosed that it conducted quarterly audits to combat fraudulent transactions, and the policy was issued accordingly. While conducting an internal audit, the Insured discovered that one of its employees had embezzled around INR 40 lac over a period of 5 months. The claim was reported to the insurer, and during its investigation, the insurer requested details of the internal audits conducted. It was found that the Insured did not have a practice of conducting quarterly audits, and in fact, it had no record of audits conducted in the past 2 years. The claim was ultimately repudiated on the grounds of misrepresentation in the proposal form. The Insurer believed that if the Insured had conducted audits as stipulated, the fraudulent activity would have been detected earlier.

Key Intent of the Claims Case Study

What is Commercial Crime Policy?

A Commercial Crime Policy provides coverage for financial losses due to crime such as theft, fraud, embezzlement, and other dishonest acts committed by employees or third parties against a business.

The insured's claim was denied due to misrepresentation in the proposal form, as it failed to disclose the true frequency of internal audits, which was critical for the policy's coverage.

Scope of the Policy

Stemming from the principle of utmost good faith or uberrimae fidei, an insurance policy is a contract between the insured and the insurance company that obliges all parties to act transparently, in good faith and not to mislead or withhold critical information from one another. An insurer relies on the information provided in the proposal form to assess the risk associated with providing coverage and to determine the premium. Therefore, the insured is obligated to provide accurate and complete material information to the insurer. This practice, known as the disclosure of material facts, forms the foundation of a fair and equitable insurance contract. Material information refers to any information on the basis of which an underwriter assesses the risk and which is significant to that risk. The omission or misrepresentation of material facts can result in claim repudiation or the policy being voided from its inception. Furthermore, the duty of disclosure applies not only at the time of availing the policy but also during the life of the policy. If the insured becomes aware of any material changes to the risk during the policy period, they must notify the insurer immediately.

Prudent: The Part Well Played

Proposal forms are an integral part of the insurance policy, ensuring transparency and fairness in an insurance contract. It is, therefore, crucial for the insured to provide truthful and comprehensive information and disclosures when availing the policy. In the present case, the claim was denied by the insurance company on the grounds of misrepresentation in the proposal form due to a breach of the duty of disclosure. If the breach is determined to be deliberate, the insurer has the right to avoid the contract ab initio. Furthermore, the duty of disclosure is not limited only to the questions raised by the insurer in the proposal form. As a broker, we ensure that our clients not only understand the importance of providing full and accurate disclosures in the proposal form but also assist them in sharing all material information relevant to the risk being covered. This is done to ensure there is no hassle at the time of a claim.

How Can an Insured Comply with the Duty of Disclosure?

- While obtaining the policy, disclose all material facts and information truthfully and accurately in the proposal form, as known to the insured
- During the policy period, inform the insurer immediately if there are any changes in the risk being covered
- Disclose any other information that may be relevant to the Insurer’s interests, even if not specifically asked for by the insurer
- Ensure that all information provided to the insurer is accurate and complete

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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