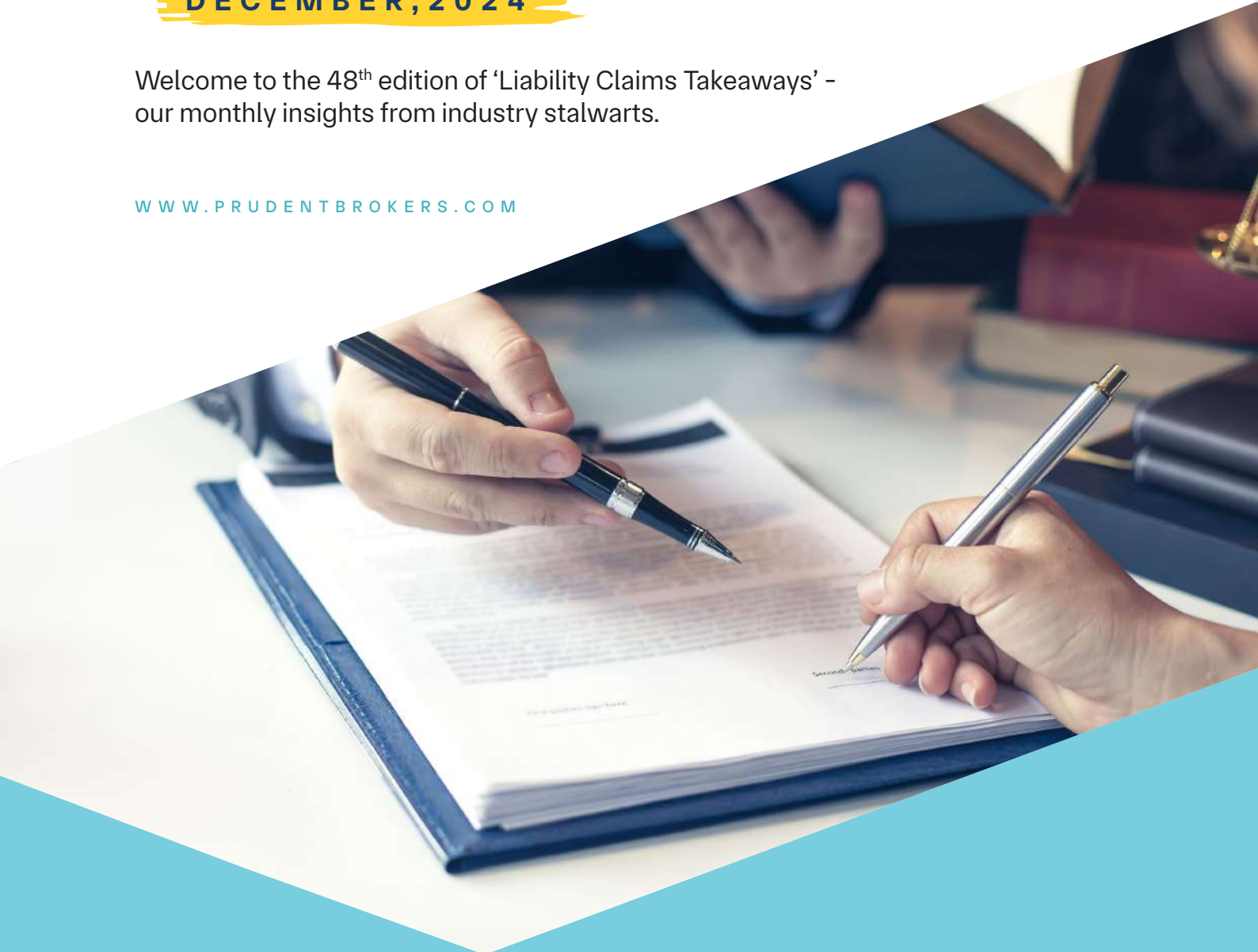


Liability Claims *Takeaways*

DECEMBER, 2024

Welcome to the 48th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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1 Directors & Officers Insurance (D&O)

Event Chronology

The insured, a listed company, was in the business of import and export. An individual director who was responsible for “risk management” at the company received a legal notice and a courtesy copy of the suit, intended to be filed by the shareholders. The allegations mentioned in the notice and the suit included breach of fiduciary duties and mismanagement by the director. He allegedly also failed to act in the best interests of the company which had a negative impact on the company’s financial stability and shareholder value. The claim was notified under the D&O Policy.

Key Intent of the Claims Case Study

A D&O Policy is designed to protect individual directors and officers from the claims initiated against them on account of a “wrongful act” committed or alleged to have been committed in their managerial capacity. The policy covers any investigation costs, defence costs, and settlements. In case of securities claim, entity also finds cover for any damages and defence costs. In this case, the insurer agreed to cover the defence costs incurred by the director as the allegations were established to fall within the scope of the policy.

Scope of the Policy

Multiple allegations

The legal notice and suit contained various allegations against the director. It was pertinent to review each allegation and assess whether it fell within the purview of the term “wrongful act” as defined in the policy.

Insurer’s consent in the appointment of the defence counsel

The D&O Policy covers “reasonable” defence costs incurred in defending the allegations made against the insured. The question of reasonability was raised by the insurer over the counsel, appointed by the insured, since the insurer found the hourly rates to be high and that there was excess staffing on the matter. While the insurer eventually consented to the appointment, based on the merits of the case and the allegations made, it was important to strategise on how the matter should be taken forward, including whether a settlement should be explored sooner than later to mitigate costs.

A strategic and planned approach to avoid an adverse judgement helped secure a favourable outcome.





Prudent: The Part Well Played

As the broker, we assisted the insured in not only gathering information requested by the insurer, but we also reviewed the documentation and information including corporate decisions, minutes of board meetings, and financial disclosures. We assisted the insured in drafting and compiling responses, including gathering evidence while ensuring that the legal strategy was aligned with the insurer's guidelines. We also co-ordinated with multiple stakeholders including the defence counsel, the insurer and the insured's legal and finance team to ensure seamless transfer of information. As the insurer had raised objections over the defence counsel, we justified the reasons for their appointment and even negotiated the hourly rates with the defence counsel. Post that, we were able to obtain the insurer's consent.

Given that the allegations made against the director were severe, and the likelihood of an adverse judgment against the insured was high, we also justified to the insurer the defence counsel's strategy, and the advise to settle the claim. This contributed eventually to the insurer agreeing to a strategic settlement.

2 Non-owned and Hired Automobile Cover

Event Chronology

In January 2024, a renowned hotel in India faced a potential lawsuit due to a road accident. The hotel routinely leased cars to provide pick-up and drop-off services for its guests, and on one such day, a hotel employee was driving the leased car to drop a guest to the airport. While on their way, another car suddenly swerved in front of the hotel car, and to avoid collision, the employee crashed into the divider resulting in significant injuries to the driver and the guest. Both parties were immediately taken to the hospital for treatment and were discharged after a few days. Due to the accident, the guest had to miss his flight and the subsequent connecting flights to the USA. He lodged a claim against the hotel for compensation for medical expenses, cancelled flights, and loss of income since he had to take time away from work.

Key Intent of the Claims Case Study

The Non-owned and Hired Automobile Cover works in a similar manner to a third-party cover under motor insurance. Vehicles rented by a company that are used in the course of conducting company business are considered “hired vehicles.” This cover protects an insured for claims of bodily injury and property damage, including medical expenses, and financial losses caused by vehicles that an insured hires (i.e. hired vehicles) or borrows (i.e. personal vehicles of an employee that are “borrowed” for business use).

Scope of the Policy

Hired and Non-owned Automobile Cover works in excess of the motor vehicle policy. In this case, even though the motor policy had a limit of INR 5 lac, the claim by the guest far exceeded this amount. The burden of liability therefore vicariously fell on the hotel.

The demand made by the guest also included loss of income and financial loss due to cancelled flights, which had to be substantiated with proof. The guest, being a foreign national, threatened to file a suit against the hotel in the country of his residence, the USA.

Prudent: The Part Well Played

After notification, we ensured that all necessary legal procedures were followed including filing FIR and due process of law was complied with. All medical records were submitted along with the police reports to the insurer. Given the risk of litigation in the USA and potential reputational damage to the hotel, we convinced the insurer to consent to an out-of-court settlement with the guest. This we did by presenting a detailed analysis of the claim, the strength of the allegations and the likelihood of an adverse ruling if the case proceeded to court.



A detailed analysis and structured approach mitigated potential liability and reputational damage through a strategic out-of-court settlement.

3 Medical Professional Indemnity Insurance

Event Chronology

In 2012, the insured hospital received a summons from the Rajasthan State Consumer Disputes Redressal Commission that a former patient had filed a complaint alleging that the doctors mismanaged her pregnancy, and this negligence resulted in complications during childbirth and eventually, the death of the baby. After nearly a decade of litigation, the Consumer Forum ruled in favour of the patient and awarded a compensation of INR 10 lac with an interest of 6% p.a. from the date of filing the suit. In 2023, we received the claims mandate from the insured, and by this time, the total amount owed had increased significantly due to the accumulated interest.

Key Intent of the Claims Case Study

A Professional Indemnity (PI) Policy for medical institutions provides financial protection to healthcare institutions against claims arising from alleged negligence, errors, or omissions in the performance of medical services. The PI Policy also covers defence costs incurred in defending the hospital or its staff against claims, whether the allegations are proven or not.

Scope of the Policy

To establish the medical negligence of the insured, the insurer needed the complete set of medical records, patient consent forms, doctor's notes, treatment protocols, and expert opinions. The hospital struggled to provide full set of records given the long duration of the trial, during which several documents had been misplaced or were incomplete. The gap in documentation delayed the assessment and settlement process. As a result of this, the insurer deemed the insured as 'non-compliant' to the policy conditions, requiring them to share timely updates on the proceedings and co-operate in sharing documents. The lack of timely documentation also resulted in the interest continuing to accrue.

In spite of complex and significant documentation gaps, a successful claim payout was achieved.

Prudent: The Part Well Played

After receiving the claims mandate, we set up multiple meetings with the insurer to streamline the documentation and information necessary to establish coverage under the policy. We co-ordinated with the defence counsel on the matter to provide all evidence and written submissions for the insurer's review. Where gaps existed, we advised the insured on how to compile supplementary information or submit affidavit to bridge these deficiencies. We meticulously addressed all questions and concerns raised by the insurer – including clarifying the inconsistencies in medical records, justifying the delay in submission, etc. By this, we managed to secure the total payout of the awarded amount, including the accumulated interest and defence costs.



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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PRUDENT INSURANCE BROKERS PVT. LTD. (Composite Broker)

Certificate of Registration IRDAI No. 291 & IFSCA No. 017 (Validity: 18th February 2023 to 17th February 2026)

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