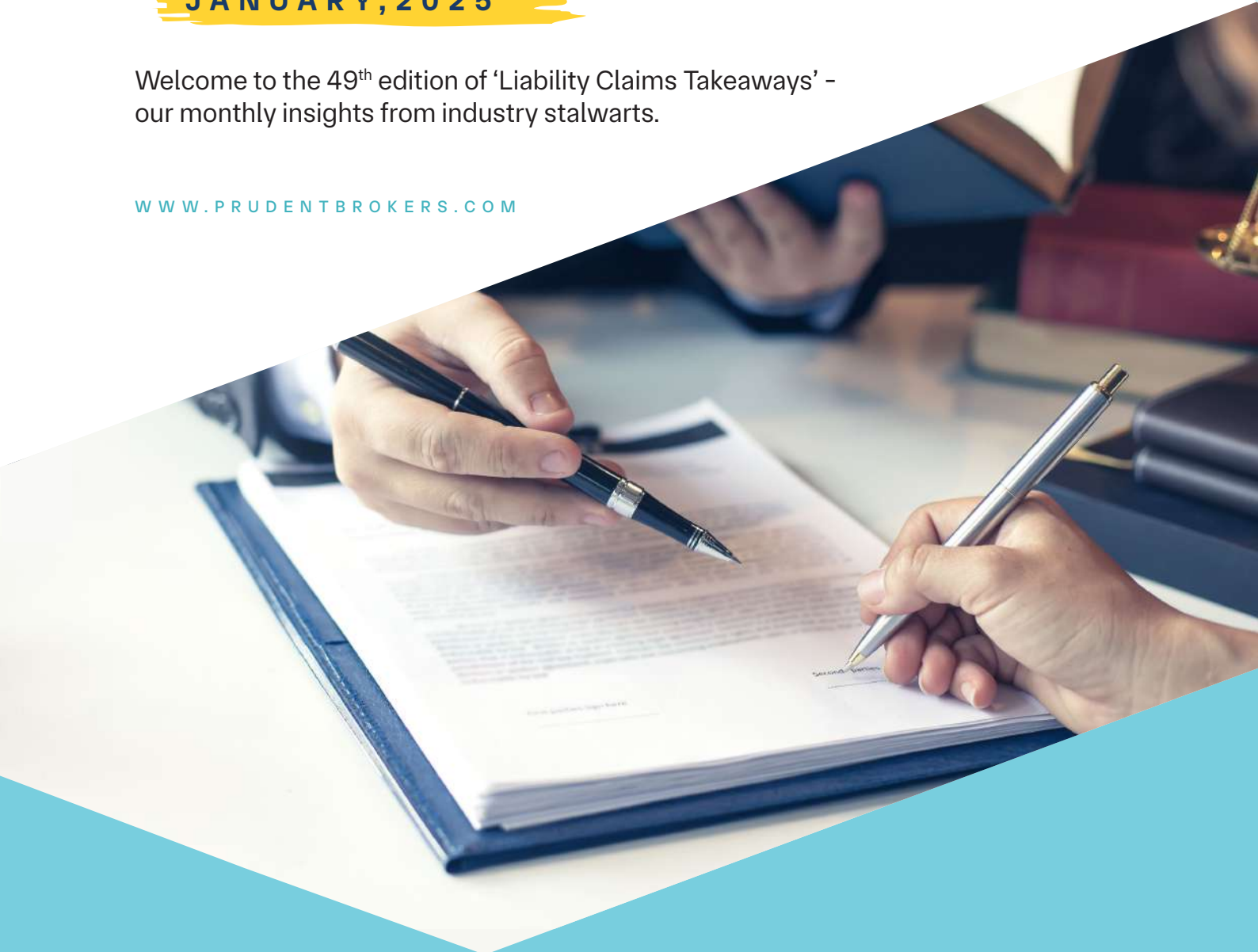


Liability Claims *Takeaways*

JANUARY, 2025

Welcome to the 49th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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Content:

1

Errors and Omissions Insurance (E&O)

2

Comprehensive General Liability Insurance (CGL)

3

Directors and Officers Liability Insurance (D&O)

1 Errors and Omissions Insurance (E&O)

Event Chronology

The insured, an ITES company, developed and maintained a software related to purchase of gift vouchers to customers for a multinational corporation in Dubai. The corporation engaged in retail fashion and did multiple campaigns for engaging customers. Considering the growing business, the software was updated whenever required and everyday functioning of the software was handled by the insured. During the last software update, there was a glitch in it, and extra vouchers were released to some customers. The multinational corporation tried to recover the amount by cancelling certain vouchers, but were not successful. Based on the indemnification clause under the contract between the insured and the multinational corporation, they raised a claim on the insured for recovering the remaining loss amount. The claim was notified under the E&O Policy by the insured, which was sourced directly from an insurance company without an intermediary.

Key Intent of the Claims Case Study

What is an E&O Policy?

An E&O policy provides protection to an insured against claims by a third party on account of actual or alleged negligent acts, errors or omissions in the performance of professional services by the insured.

Scope of the Policy

Exclusion under the policy

The policy has an exclusion for liability or obligation arising purely on account of a contract between the parties. The carve back to this exclusion is that in case the insured would have been liable even in the absence of the contract/agreement, the liability would be covered under the policy. While there were multiple email exchanges between the insured and the insurer, there were issues faced by the insured on account of the technical language used by the insurer in their communication. Further, due to some misinterpretations of the insured's mail, the insurer highlighted the exclusion that the liability arose purely due to the contractual obligation of the insured and indicated a lack of coverage for the claim.

Claim against the insured

Since the multinational corporation faced losses, they issued a demand letter to the insured and threatened to invoke the dispute resolution clause under their agreement, which allowed the claimant to approach courts in Dubai in order to recover the loss faced by them. The matter required urgent attention.



An E&O Policy may also have an extension for employee dishonesty coverage, which provides indemnity in case of any claim arising out of any dishonest or fraudulent conduct of any present or former employee under the insured's supervision while providing professional services.



Prudent: The Part Well Played

Once we received the claims mandate, we explained the entire incident and the error by the insured in rendering the professional service, which led to the excessive issue of vouchers and loss for the insured's customer. We also simplified the queries raised by the insurer for the insured to be able to respond with their technical inputs related to software updates and testing. We received coverage confirmation based on our first mail itself and were able to establish the loss quantum in order to receive the loss assessment for the entire claim value without any non-standard deduction.

2 Comprehensive General Liability Insurance (CGL)

Event Chronology

The insured was a manufacturer of steel products that were installed in renewable energy equipment before being sold to companies in that sector. The insured received specifications and design for certain drag links to be made from its customer and to be supplied within a certain period for a particular solar energy plant. The insured manufactured the product and supplied it to the customer. During the installation of the insured's product, the customer discovered a defect that caused irreparable damage to their product. Due to the customer's delivery obligations and related timelines, the customer had to purchase replacement products from other party and incur air freight to deliver the final product. The customer raised a debit note against the insured. The insured notified the claim under its Comprehensive General Liability Policy (CGL Policy).



Key Intent of the Claims Case Study

What is a CGL Policy?

A CGL Policy provides coverage for legal liability arising from property damage or bodily injury due to an accident at the insured's premises or due to the insured's business. There are also extensions available for product guarantee, financial loss, and product recall.

Financial Loss endorsement does not provide coverage for loss arising on account of delay, non-performance, or non-completion of a contract by an insured.

Scope of the Policy

Coverage under Financial Loss

The insured had to incur a liability on account of the debit note raised by the customer for costs related to the replacement product and the air freight to deliver the final product.

In order to trigger coverage under the financial loss endorsement of the policy, it was required that the insured established the following:

1. There was financial loss incurred by the customer/third party;
2. The financial loss was on account of the insured's product which failed to perform the function for which it was manufactured, designed, sold, etc.; and
3. The loss was not arising from bodily injury or property damage.

Prudent: The Part Well Played

In order to take the notification forward, we assisted the insured to establish before the insurer that the customer of the insured suffered financial loss on account of a defect in the insured's product. Since the customer had to pay a higher price than the insured's product for the replacement product and also incur freight cost, they raised debit note for both these costs. We were able to showcase that this delta and the freight cost that was being claimed from the insured, was a demand and a loss for the insured due to its product failing to fulfil its intended purpose and hence, covered under the financial loss endorsement of the CGL policy.

3 Directors and Officers Liability Insurance (D&O)

Event Chronology

The insured had an educational institute with multiple schools operating across the country. The insured had the necessary affiliations and ranked among the top 10 educational institutes in India. During an event at the insured's premises, which was managed internally by the faculty and the administrative staff of the insured, there were certain altercations between the students, which led to injury to a few students. The insured rusticated a few students who later filed a case against the senior management of the insured, different faculty and the administrative staff of the insured, and thereafter, the matter was notified by the insured under the D&O policy.

Key Intent of the Claims Case Study

What is a D&O Liability policy?

A D&O Liability policy provides coverage to an insured person for claims filed against them for actual or alleged wrongful acts, including misrepresentation, error, breach of duty, etc. 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.

Scope of the Policy

Delayed intimation

In the present matter, once the insured became aware of the litigation against them by the students, the insured proceeded to file the quashing petition at priority considering the impact of such litigation. Since the insured had already appointed legal counsel, the policy condition of prior consent was not fulfilled.

Long-tail liability

The affected parties initiated multiple proceedings before different forums. While counter proceedings were also initiated by the insured, all these matters still kept going on for years. Due to this, there were multiple hearings every month, which had to be tracked and informed to the insurer. Further, updates related to the strategy adopted by the insured also had to be informed, along with timely invoices raised by the legal counsel. All tax-related documents, along with payment proofs, had to be submitted to the insurer to ensure timely reimbursement of defence costs under the policy.

Generally, a D&O policy has a conduct exclusion which states that in case there is a written admission, or the final adjudicating authority holds that the insured wilfully breached its duty or recklessly/knowingly violated any law or regulation, the insurer shall not be liable to pay any loss related to such matter.





Prudent: The Part Well Played

At the time of intimation, considering the stage at which the matter had already progressed, we ensured that all the details related to the incident, the court proceedings, the counsels involved, etc. were informed to the insurer on priority. We were able to establish the urgency related to the filing considering the adverse impact such matters could have on any entity and its officers.

We were engaged with the insured by seeking timely updates from them/their counsel in relation to the proceedings. The information was shared with insurer in a timely manner post our involvement along with details related to the defence counsel invoices being raised which were reimbursed in a periodic fashion.

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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**Liability
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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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