

# Liability Claims *Takeaways*

JULY, 2024

Welcome to the 43<sup>rd</sup> edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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## Content:

**1**

**Commercial General  
Liability Insurance**

**2**

**Bankers Indemnity  
Insurance**

**3**

**Employment Practices  
Liability Insurance**

# 1 Commercial General Liability Policy

## Event Chronology

The insured is a prominent player in the auto component manufacturing industry. The insured manufactures auto parts, often measuring under 4-5 cm, with multiple-minute components. Any deviation from the actual design, approved by the customer, will result in the product being rendered redundant since it cannot be reworked/repared.

One of the insured's customers rejected over 6000 pieces of supplied goods due to incorrect dimensions, resulting in loss to the customer and replacement to be upwards of INR 6,00,00,000. The claim was notified 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 business.

## Scope of the Policy

### The proof of loss lies in the documents

The insured's customer was unable to utilise the product in its existing form and since repairing the same was not an option, the product was required to be destroyed. Bringing the goods back to India and then destroying them was economically not viable for the insured. Therefore, the insured decided to destroy the goods in the USA, where it was supplied. At this stage, to justify that the insured's decision to destroy the goods in USA was more cost-effective, we advised the insured to get three different quotes for destruction to substantiate the rates. In parallel, we also submitted the break-up of the freight and destruction costs in India. By sharing this information with the insurer, we were able to get them on board with the insured's decision, thereby getting the costs approved and covered under the policy.

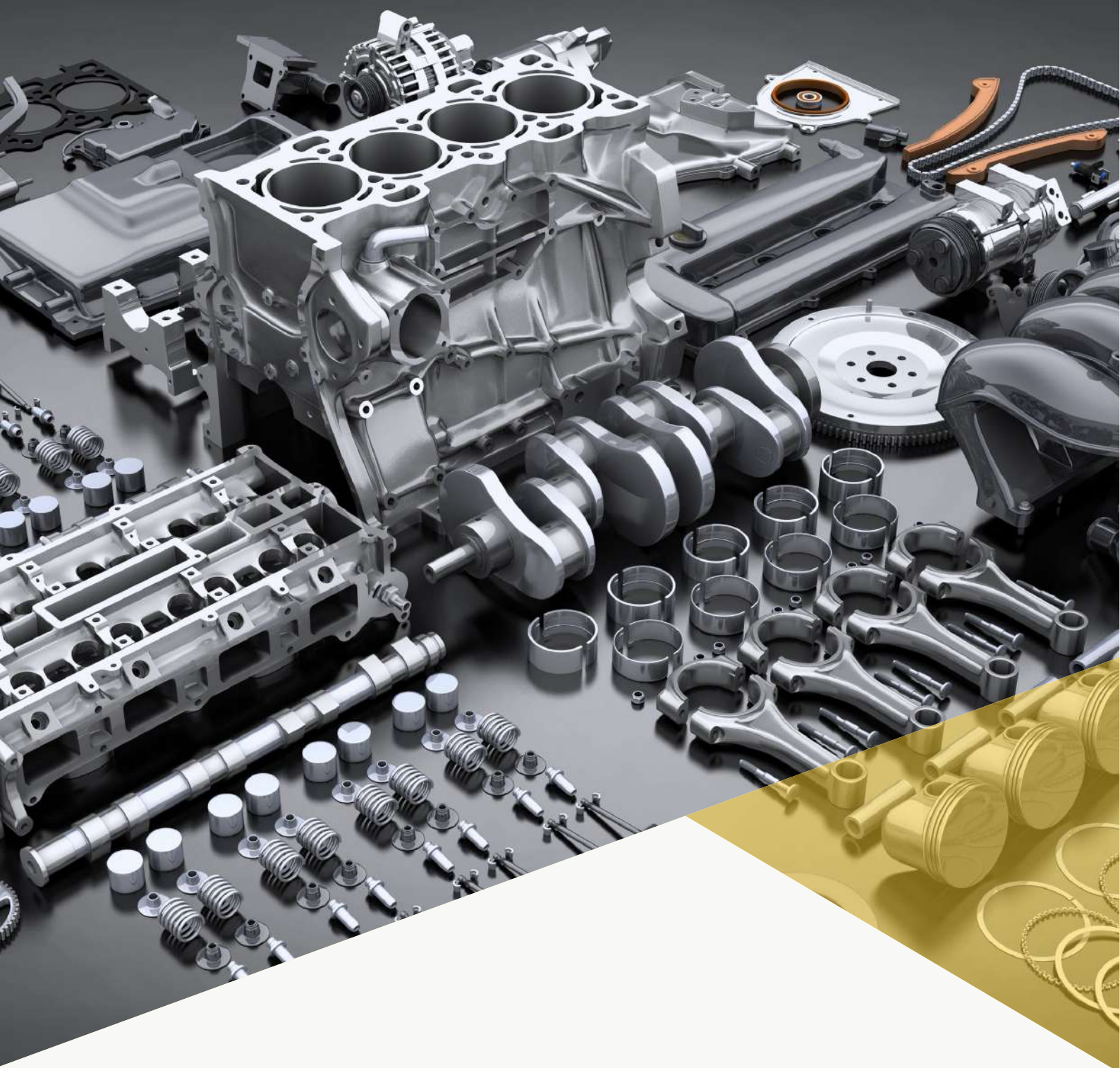
### Engaging with the insurer and surveyor to ensure alignment of all stakeholders

Given that the claim was spread across multiple jurisdictions, the costs were also visibly higher, and the momentum of the claim process was also significant. Hence, it was critical for all parties to have agreed on the way forward to ensure that the final claim process was under control with no unforeseen setbacks. After receiving the claim notifications, we ensured that all the correspondence between the stakeholders was being shared transparently. In addition to this, we ensured that all consents, approvals and decisions were discussed beforehand, resulting in a smoother claim outcome for all parties.

CGL policies also provide extensions for product liability claims wherein costs for recalls, product guarantee and financial loss are covered under the policy.







## Prudent: The Part Well Played

We advised the insured of the covers and relevant triggers under the policy beforehand such that the insured is aware of the manner in which the policy will respond. We shared the preliminary list of information that would be required during the pendency of the claim so that the insured and their team can work on collating the requisite information beforehand. This is to ensure that the entire claim process is smoother, and the turnaround time can also be minimised.

# 2 Bankers Indemnity Insurance

## Event Chronology

The insured is one of the largest nationalised banks in India with a strong pan-Indian presence. The insured operates its own ATMs and has branches spread across the country. There have been multiple instances of thefts and robberies reported within the insured's branches and ATMs, including cash/ gold being in transit. To protect itself from such losses, the insured availed of a Banker's Indemnity Insurance Policy. The insured reported losses upwards of INR 30,00,000 per month from the theft of gold loan bags by one of its employees, resulting in losses upwards of INR 4,00,00,000.

## Key Intent of the Claims Case Study

### What is a Bankers Indemnity Insurance policy?

A Bankers Indemnity Insurance Policy is designed to cover the many risks a bank encounters. This insurance policy covers the loss of money, securities, gold, precious metals, and pledged goods. It protects these valuables while they are stored at the insured's premises, their banker's safe deposit, or while being exchanged, converted, or registered. The policy also covers these items while they are in transit, from the moment an employee picks them up to their final delivery. Dishonesty, infidelity & errors and omissions on the part of bank employees are also covered under this policy.

## Social Engineering and What it Covers

### Manner of calculation of losses

Given that the insured has suffered the loss of the gold loan pledged to the bank, it is critical that the loss valuation was also in accordance with the bank's practices of recovery. This is because the fluctuations in the gold rate would impact the final outcome of the gold value to date. Therefore, at the time of binding the policy, our team got this calculation as a part of the policy to ensure that while dealing with a claim, there is no ambiguity on arriving at the loss value. Therefore, as per the reading of the policy, the value for the purpose of settlement of any claim with respect to jewellery/ornaments/precious metals was considered at 100% market value as on the date of loan/date of pledge registered in the bank's documents or market value as on date of loss whichever is higher. However, the amount payable by the insurer will not exceed the amount paid by the insured to the customer of the bank. This set the tone for the entire policy period, and all claims were assessed accordingly.



This transit coverage applies regardless of the mode of transportation (road, rail, or air) and extends to both internal cash transfers and those handled by outsourced agencies.





## Prudent: The Part Well Played

Understanding the insured's business and risk prior to getting hit by a claim is critical since aligning the insured's requirements with those of the policy cover leads to a smoother claims process throughout the policy period. Additionally, laying down a standard SOP was also critical such that each branch can identify claims and report them within the specified timelines.

# 3 Employment Practices Liability Insurance

## Event Chronology

In 2021, an employee of the insured filed a complaint for wrongful termination by the insured. The employee alleged that he was terminated by the insured in retaliation for filing a complaint with the insured's HR department regarding harassment by his supervisor. The employee alleged that his supervisor denied him promotions and mistreated him. The insured argued that the employee was terminated on account of indiscipline and breach of employment agreement. The insured also filed a counterclaim against the employee on this basis. The insured notified the matter under the Employment Practices Liability Insurance (EPLI) policy.

## Key Intent of the Claims Case Study

### What is EPLI policy?

An EPLI policy provides coverage for claims arising from a "wrongful employment act" by the insured. The Wrongful Employment Act refers to any actual or alleged action by the insured, whether committed or attempted, such as breach of employment contract, harassment, retaliation, wrongful termination, failure to promote, employment-related misrepresentation, etc.

## Scope of the Policy

### Defence cost for counterclaim by insured

In the present matter, the insured informed the insurer about the claim and gave necessary consent for the defence counsel's appointment and hourly rates. However, during litigation, the insured filed a counterclaim against the employee/complainant, alleging a breach of his employment contract. The insured's defence counsel raised a single invoice for their engagement in this matter.

### Settlement through mediation

While the matter was being heard before the court of law, the insured further investigated the conduct of the supervisor. On account of some adverse information that came to light, the insured sought consent for an out-of-court settlement. The employee/complainant claimed USD 80,000 as a settlement, which included compensation damages for mental anguish and the legal fee for his defence counsel. Finally, after receiving the necessary consent from the insurer, the insured settled the claim. The insured raised a claim bill for USD 80,000 (which was paid as settlement) and the defence cost incurred by it.



Any complaint received from an employee which could potentially lead to a claim against the insured should be notified to the insurer as a circumstance under the policy as soon as practicable and within the policy period.



## Prudent: The Part Well Played

Considering the nature of the allegations and the internal investigation, we assisted the insured in putting forward a strong case before the insurer, seeking their consent for the settlement of the dispute. The insurer's initial position was to withhold cover for the defence costs incurred by the insured. However, we were able to convince the insurer to allow the defence costs, which were incurred by the insured for defending the allegations by the employee/complainant. The policy only covers the defence cost of the insured and the cost incurred for filing the counterclaim is not intended to be covered under the policy. To arrive at the payable amount, we requested detailed invoices with narration from the insured's defence counsel and reviewed them. We were able to segregate the time spent on the defence of the insured and on filing the counterclaim. We made the necessary submission before the insurer for segregated defence costs, and the insurer reimbursed the insured for the settlement amount and the defence cost incurred.



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

**Stay tuned for the next edition!**

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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.



## FOR MORE QUERIES, PLEASE REACH OUT TO:

**Tanuj Gulani**

[tanuj.gulani@prudentbrokers.com](mailto:tanuj.gulani@prudentbrokers.com)

**Jyoti Krishnan**

[jyoti.krishnan@prudentbrokers.com](mailto:jyoti.krishnan@prudentbrokers.com)

**Richa Dhasmana**

[richa.dhasmana@prudentbrokers.com](mailto:richa.dhasmana@prudentbrokers.com)

**Sugandha Rohatgi**

[sugandha.rohatgi@prudentbrokers.com](mailto:sugandha.rohatgi@prudentbrokers.com)

**Nishant Kashyap**

[nishant.kashyap@prudentbrokers.com](mailto:nishant.kashyap@prudentbrokers.com)

**Hemangi Jhaveri**

[hemangi.jhaveri@prudentbrokers.com](mailto:hemangi.jhaveri@prudentbrokers.com)

**Neha Anand**

[neha.anand@prudentbrokers.com](mailto:neha.anand@prudentbrokers.com)

**Rakshita N**

[rakshita.n@prudentbrokers.com](mailto:rakshita.n@prudentbrokers.com)

**Mayank Sharma**

[mayank.sharma@prudentbrokers.com](mailto:mayank.sharma@prudentbrokers.com)

**Sonali Gosain**

[sonali.gosain@prudentbrokers.com](mailto:sonali.gosain@prudentbrokers.com)



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## PRUDENT INSURANCE BROKERS PVT. LTD.

Mumbai | Bengaluru | Gurugram | Pune | Chennai | Hyderabad | Ludhiana | Ahmedabad | GIFT City - Gujarat | Kolkata | Vadodara | New Delhi

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