



Liability Claims

T A K E A W A Y S

JULY, 2025

Welcome to the 54th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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1 Directors and Officers Liability Insurance Policy (D&O Policy)

Event Chronology

A claim was initiated against a company director, and shortly thereafter his personal assets were frozen at the direction of the court. In the midst of this incident, the company entered into liquidation, leaving both the company and director unable to fund for the defence of the director. The insurer, exercising its discretion declined to use its right to defend. This combination of events created a critical gap in support and called for a strategic intervention.

Key Intent of the Claim

Case Study

This case study illustrates the practical significance of specific policy wordings in Directors & Officers (D&O) insurance, particularly under Side A cover. It highlights how requesting advancement and pay to or on behalf can serve as a critical operational clause in preserving the insured's rights and access to defence mechanisms in scenarios where traditional indemnity pathways are unavailable.

Scope of the Policy

A Directors and Officers (D&O) Liability insurance policy provides financial protection to individuals serving as directors or officers of a company against claims made against them for alleged wrongful acts in their managerial capacity. The policy helps protect their personal assets when they are sued for decisions or actions taken on behalf of the company.

Side A covers directors and officers directly for loss (meaning defence costs, settlements judgements etc) when the company is unable to indemnify them-due to insolvency or legal restrictions; ensuring the individual receives protection.



Highlight

This case underscores how precise wording in a policy and proactive claims management can safeguard directors in times of crisis. A seemingly minor detail in the Side A cover of the D&O policy can have significantly practical implications, specifically the inclusion of the phrase “pay to or on behalf of the insured”. The distinction between “pay to” and “pay on behalf of” is not merely semantic. In distressed scenarios involving asset freezes or incapacity, it can be the decisive factor in ensuring the coverage is adequate under the policy.

Side B reimburses the company when it has indemnified its directors for the loss.

Prudent: The Part Well Played

Advancement is a policy mechanism that allows the insurer to pay legal defence costs upfront or on an ongoing basis rather than waiting till the end of the litigation/proceeding. The presence of “pay to or on behalf of” wording in the D&O policy proved decisive. It enabled the insurer to make payment to a third party stepping in for the director, thus preserving his right to legal defence at this critical juncture. To legitimise the arrangement, a Power of Attorney (POA) was executed in the name of his family member, who stepped in for the defence of the director, authorising them to act on his behalf. Once a proof of loss was submitted with the supporting document, the insurer indemnified the family member for the defence costs and expenses admissible under the policy.



2 Cyber Risk Insurance

Event Chronology

A leading tech firm experienced a cyber incident that led to a severe disruption in its operations. The business suffered a 40-day interruption, during which the company had to act quickly to limit further operational and financial damage. In addition to appointing forensic, legal, and incident response consultants, the insured arranged for alternate servers, rented laptops, paid overtime to employees, and temporarily relocated certain staff to restore normalcy. These actions were taken as reasonable expenses to mitigate operational fallout and continue business functionality.

Key Intent of the Claim

Case Study

What is a Cyber Insurance Policy?

Cyber Insurance is a comprehensive policy which helps businesses manage the financial impact of cyber incidents by covering first-party losses such as incident response and restoration, forensics, legal, crisis communication, and business interruption. It also extends to third-party liabilities such as regulatory fines, claims from third parties and associated defence cost.

Scope of the Policy

The policy defines Business Interruption to include:

- i. Loss of net profits
- ii. Increased cost of working
- iii. Restoration costs
- iv. Additional expenses with the prior consent of the insurer

The insurer initially argued that no payout was due as the company was not generating profit, and therefore, business interruption did not apply



Highlight

This case study aims to demonstrate the relevance and practical interpretation of business interruption cover under a cyber insurance policy, particularly for companies that are not in profit. It highlights how a loss-making status does not negate entitlement to legitimate heads of cover, such as increased cost of working, restoration, and additional expenses, especially when undertaken prudently by the insured to mitigate further losses

Prudent: The Part Well Played

As the broker and claims advocate, we played a pivotal role in challenging the insurer's narrow interpretation of the business interruption clause. Through a detailed and technical representation, we demonstrated how the insured's incurred costs clearly aligned with the 'increased cost of working', 'restoration costs', and 'additional expenses' provisions within the policy. We ensured that appropriate documentation was gathered, presented a clear chronology of mitigation steps taken by the insured, and secured recognition of these costs as covered expenses. Our advocacy ensured full recovery for the client, even without net profits being there.



3 Employment Practices Liability Insurance (EPLI)

Event Chronology

The insured, a tech company, terminated an employee. The employment contract explicitly stated that in such cases, the employee would not be entitled to ESOPs, severance, bonuses, or other post-termination benefits. Despite this, the individual initiated proceedings before the EEOC, alleging unpaid dues and denied benefits.

Key Intent of the Claim Case Study

The proceeding met the policy's definition of a "claim", which triggered the insurer's obligation to cover defence costs. However, the insurer initially denied coverage, citing the policy definition of loss that "loss" does not include contractually owed payments.



Scope of the Policy

What is an EPLI policy?

This policy protects organisations from employment-related disputes and actions which lead to costs attributable to defence of the matter and any potential settlements, judgements, or awards against the insured resulting in monetary outlay for the insured.

Prudent: The Part Well Played

Prudent advocated that:

- The matter clearly qualified as a claim, thereby activating the defence cost cover
- The exclusion of contractually owed amounts did not apply to defence expenses
- There were no entitlements under the employment contract post-termination with cause

We engaged with the insurer with a fact-backed and policy-driven position, ensuring the insured's rights under the policy were upheld and the defence costs incurred by the insured were reimbursed.

Highlight

Linking defence costs coverage to the claim ensures that coverage is triggered as soon as formal proceeding begins -regardless of whether the underlying allegations are ultimately covered under "loss". If defence costs are tied to the loss, then the insurer can deny coverage early on by arguing that the claim relates to excluded 'losses', leaving the insureds to find their own defence. This distinction is critical in liability policies where the cost of defending a claim can be substantial even if no liability is eventually attached upon the insured.

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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