



Liability Claims

T A K E A W A Y S

JUNE, 2025

Welcome to the 53rd edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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1 Crime Insurance

Event Chronology

The insured, a security solutions and background verification services firm, deployed on-site security officers at a client's manufacturing unit. In the case at hand, the insured's client was an IT services and distribution company. The insured's personnel had access to the client's premises during their duties. The insured's personnel took advantage of this access and unlawfully removed the client's assets from the premises. The theft was discovered through an investigation carried out by the client for the missing items through CCTV footage.

Key Intent of the Claim

Case Study

What is a Commercial Crime Policy?

A crime policy covers an insured organisation against dishonest acts of employees or third parties leading to financial losses to the insured. Often, the policy affords coverage towards risks of theft, fraud, forgery, amongst others.

Traditionally, commercial crime policies focused on physical risks such as theft on premises or during transit. However, with the evolving nature of business operations, these policies have expanded to include modern threats like computer frauds, funds transfer frauds, and social engineering attacks.

Scope of the Policy

Claim Against the Insured

In response to the incident, the client withheld payment for outstanding invoices, citing breach of trust and failure to safeguard their property. This refusal to pay resulted in a significant financial loss for the insured.

The client sent a notice to the insured, citing breach of agreement between the parties, holding the insured liable for their loss, and reserving their rights under the agreement and law.



Highlight

A commercial crime policy should be procured with a clear understanding of the types of losses the insured may suffer – not just direct financial losses, but also losses suffered by a third party. For service-based industries, a third-party crime extension is especially critical, as employees often operate on client premises.

However, there may be overlap with PI policies and therefore, it is essential that both policies are structured in consonance, with careful attention to "other insurance" clauses, to avoid coverage gaps or disputes between insurers over responsibility.

Prudent: The Part Well Played

The loss was notified to the insurer under the scope of two policies, Crime Insurance and Professional Indemnity (PI) Insurance. The crime policy extended to cover 'Third Party' losses, i.e., losses suffered by the insured's customers on account of actions of the insured's employees.

The PI policy also included an 'Employee Dishonesty' cover, which essentially provided the same coverage as the third-party crime policy extension. While the endeavour was to claim under the crime policy, we reviewed the 'other insurance' clauses under both the policies and deduced that both policies included 'excess' clauses, meaning both policies specified that the policy would pay only after other valid insurance had been exhausted. Since both policies were underwritten by different insurers, we advised that the assessment ought to be concluded by way of applying the principle of contribution.



2 Cyber Risk Insurance

Event Chronology

A leading financial services firm was subjected to a supply chain attack that compromised servers hosting application software of the insured's clients. The insured immediately isolated the impacted server to limit the extent and impact of the attack. The insured had to notify various regulators, including their sectoral regulator RBI.

Key Intent of the Claim

Case Study

What is a Cyber Insurance Policy?

A cyber policy, designed to provide financial assistance to an organisation in the event of a cyber-attack, affords coverage towards first party costs incurred by an insured as well as legal liability that may arise from affected third parties. It is imperative to understand the nature of costs covered by the policy, and the conditions precedent to the insurer's liability in order to gauge the risk covered by the policy.

Scope of the Policy

Claim by the Insured

In the event that occurred, owing to the proactive measures taken by the insured, while there were no complaints/demands from third parties, the insured incurred significant first party costs. Since the insured was under the scrutiny of various regulators, they had to undertake additional forensic investigations and assistance to ensure that their environment was clean.

Prudent: The Part Well Played

The insurer deployed a surveyor to assess the various costs incurred by the insured, who questioned the engagement of two cybersecurity firms to respond to this incident. We explained to the insurance company and surveyor that while the first engagement was for incident response measures, i.e., responding to the breach, containing the spread of malware, and recovering the systems, the subsequent engagement of assumed breach exercise would find cover under the 'Revamp Advice' costs. We sufficiently established that there was neither any duplication of work, and nor any overlap in their scopes of services.



Highlight

While a cyber insurance policy may seemingly cover all first-party costs and third-party liabilities associated with a cyber incident, there are various caveats, coverages, and deductibles that need to be well negotiated to ensure a comprehensive risk transfer for organisations.

3 Employment Practices Liability Insurance (EPLI)

Event Chronology

The insured, a cloud-based SaaS provider, terminated a senior software engineer in the USA purely on account of non-performance and role redundancy. A complaint letter from the terminated employee was received by HR shortly after severance was processed. The letter alleged unfair treatment and implied possible age discrimination, but did not contain any indication of potential legal proceedings.

Believing the severance agreement had addressed the matter, and viewing the complaint as a frivolous reaction, the HR team did not cascade the issue to the general counsel or senior management. As such, the matter was not disclosed in the EPLI renewal proposal form, which required disclosure of any "known facts or circumstances that may give rise to a claim."

The said employee then proceeded to file an EEOC complaint, later escalating to a wrongful termination and age discrimination lawsuit.



Key Intent of the Claim Case Study

What is an EPLI policy?

This policy protects organisations from employment related disputes and actions which lead to financial losses attributable to defence of the matter and any potential settlements, judgments, or awards against the insured.

Prudent: The Part Well Played

As soon as the matter was notified, the insurer assumed a preliminary position that the present matter was a 'known circumstance', i.e., the matter should have been notified to the insurer before the renewal when it first came into the knowledge of the Insured.

We contended that prior knowledge exclusion shall not apply since an actual claim did not exist prior to the policy renewal. Moreover, as soon as the litigation commenced, the insured notified the matter to the insurer, and adhered to the policy terms and conditions, most importantly, sought insurer's consent prior to engaging a counsel and initiating any settlement discussions.

We also shared internal emails of the insured which evinced the insured's reasonable belief of no further action on account of this termination.

Highlight

Companies must implement a strong internal risk management system and ensure that all potential claims or complaints are communicated to insurance teams to communicate to the insurer / broker in time to safeguard themselves from the risks of non-disclosure when renewing their insurance policies.

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.

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