



Liability Claims *Takeaways*

MAY, 2024

Welcome to the 41st edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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1 Professional Indemnity Insurance (Medical Practitioners)

Event Chronology

The insured is a renowned pulmonologist with 23 years of work experience. In 2022, a patient was admitted to the emergency department due to fever, dry cough and shortness of breath. The insured examined the patient and treated the patient till the discharge. Incidentally, the patient was re-admitted due to shortness of breath under the supervision of the insured, and prescribed tests revealed scarred tissues in the lungs. Further monitoring of the patient was advised. Acting against the medical advice, the attendants (who were with the patient) got the patient discharged. Later, the patient was admitted to another hospital owing to severe medical issues, and he succumbed during the treatment.

In 2023, the patient's family sent a legal notice claiming INR 1.5 crore compensation against the insured and filed a consumer complaint for gross medical negligence. Subsequently, the insured claimed coverage under the Professional Indemnity Insurance Policy.



Key Intent of the Claims Case Study

What is Professional Indemnity Insurance (Medical Practitioners)?

The Professional Indemnity Insurance for medical practitioners covers the insured for error, omission and negligence in rendering medical services by the insured to any third party. In addition to the general terms and conditions, there are two conditions which need to be fulfilled for any claim to be considered by an insurer:

- The alleged act which gave rise to the claim, happened within the prior act/retroactive date of the policy and
- The claim against the insured was first made in writing during the existing policy period

It is important to note that this insurance policy falls under the claims-made policy wherein a prior-act/retroactive date ensures that any incident which took place post such date (retroactive date) but before the policy start date is also covered when a claim is made for the first time on account of such incident during the subsisting policy period.

Scope of the Policy

The insured must be aware of the coverage provided by the insurance policy alongside its terms and conditions. This ensures that during any claim, the insured understands the policy requirements clearly and does not breach any policy condition. Furthermore, timely intimation of the legal notice/complaint/petition to the insurance brokers/insurance company is critical for seamless claim processing.

Benefits of Uninterrupted Insurance

In the present case, the insured could claim coverage under the subsisting insurance policy since she had taken the Professional Indemnity Policy in 2019 and had been renewing it year-on-year without any gap. Due to this continuity, her Professional Indemnity Insurance Policy for 2023 had a prior-act/retroactive date of January 01, 2019. This allowed the insured to seek coverage under the 2023 policy for an incident that occurred in 2022 since the claim was raised for the first time in writing during the 2023 policy period.

Litigation vs. Settlement

In cases of medical negligence, there is always a possibility for an amicable settlement of the matter by the insured to avoid attracting media attention or based on the merits of the insured's case. The insured must seek prior written approval for such settlement from the insurer to ensure compliance with the policy conditions and seamless claim processing.

Prudent: The Part Well Played

We have always operated beyond the role of insurance brokers, offering guidance and handholding the insured as a partner in their risk mitigation journey. As an insurance broker, we make sure that our client/insured is informed about the importance of uninterrupted insurance, which ensures coverage for incidents that occur prior to the current policy start date since a claim may be made on a later date as well (subject to the limitation law, as applicable).

Since the Professional Indemnity Insurance provides coverage for defence costs, we

diligently safeguard the insured's interest by seeking prior approvals from the insurer. We also ensure that the insurer receives timely updates along with documentation, which allows them to be aware of the costs incurred and reasons for the same.

Furthermore, when an insured wants to pursue an out-of-court settlement, we inform the insured regarding the requirement of prior written consent from the insurer. We help the insured obtain the insurer's written consent before the settlement offer is made to the claimant.

2 Pollution Legal Liability Insurance

Event Chronology

The insured is a leading manufacturer of agricultural chemicals and industrial chemicals. The insured's industrial chemicals were manufactured across 13 plants in India. They were also exported to more than 100 countries through the insured's extensive international distribution network. In one of the manufacturing units in Andhra Pradesh, there was a chemical leak resulting in soil, surface water, and groundwater contamination. In addition, a few people were hospitalised owing to the inhalation of the toxic gases. The insured intimated the incident under their Pollution Legal Liability Policy, sourced directly from the insurer.

Key Intent of the Claims Case Study

What is Pollution Legal Liability Insurance?

With growing business complexities and related environmental concerns, organisations are exposed to higher costs and statutory liabilities resulting from pollution/contamination incidents. To safeguard themselves, organisations engaged in manufacturing chemicals, construction/excavation, energy, oil, etc., are purchasing Pollution Legal Liability policies. These policies cover on/off-site clean-up costs, third-party bodily and property damage claims, environmental restoration costs, and related defence costs. Since most general liability policies now have an exclusion for pollution incidents arising from business operations, Pollution Legal Liability policies help organisations deal with this coverage gap.



This incident highlights the importance of disclosing complete information to the insurance company at the time of policy placement and reviewing the policy once it is issued to correct any oversight.

It also reiterates the critical importance of insurance and ensuring that insurance is availed comprehensively.

Inclusion of Insured Property

In the present claim, due to the contamination and subsequent environmental damages, the insured was required to incur various costs related to the on-site & off-site clean-ups, along with the restoration of surrounding premises and natural bodies. The insured intended to claim the same under the Pollution Legal Liability policy that generally provides coverage for such costs.

However, after intimation of the claim to the insurer, it was discovered that the manufacturing unit where the incident took place lacked a mention in the list of insured properties covered under the policy. The insured had only listed 8 of its 13 manufacturing units during the declaration to the insurer and somehow missed informing the insurer about the remaining manufacturing units.

Resultantly, the insurance company denied coverage for the incident since the premise was not listed as one of the insured properties while taking the insurance policy.



Prudent: The Part Well Played

Operating beyond our designated roles and responsibilities as an insurance broker, we constantly encourage our clients to remain abreast of best practices while opting for the right coverage and claiming for the damage. We highly recommend meticulously information sharing with the insurer when signing up for any business-critical insurance. In fact, for policies placed through us, we insist on a comprehensive information check at the insured's end to mitigate any such situation.

We will provide more details on Pollution Legal Liability Policies. So, stay tuned.

3 Professional Indemnity Insurance (Media & Entertainment)

Event Chronology

The insured is an English news channel based in North India with pan-India coverage.

The insured also runs certain pre-decided programs on historical figures, movies, trends, sporting events, the stock market, and so on. The insured frequently receives legal notices on the statements made or information shared during its broadcasted programs or live discussions by its anchors. To add to ever-amplifying legal complications, in some cases, after issuing preview of future programs, complainants would directly approach courts of law seeking an injunction against the insured to prevent them from broadcasting these scheduled programs.

Key Intent of the Claims Case Study

What is Professional Indemnity Insurance (Media & Entertainment Industry)?

Professional Indemnity Insurance for media houses provides coverage in case of claims against an insured on account of the multimedia services undertaken by the insured (such as television, cable, radio broadcasting, publishing research, etc). This insurance also covers disputes related to alleged breach of intellectual property rights.

Generally, the policy specifies the rate at which court attendance costs reimbursement would be made and the sub-limit attached to this endorsement.

Prior Consent for Defence Counsels

The policy mandates a prior written approval from the insurer before engagement of any defence counsel by the insured. In the present matter, considering the specific business of the insured and the time-sensitive nature of the programs, the insured had prior approval from the insurer for engaging defence counsels to address the legal notices and injunctions on a regular basis.

Court Attendance Cost Reimbursement

In certain claims where the complainant has initiated legal proceedings against the insured, the directors or employees of the insured may be mandated by law to appear before the court as witnesses in connection with such claims. This highlights the importance of having an endorsement for court attendance cost reimbursement, which allows the insured to seek court attendance cost incurred by its director or employee. It must be noted that such reimbursement is only provided when the claim is covered under this policy.





Prudent: The Part Well Played

Based on the niche area in which our clients operate, we advise them to provide a list of counsels/law firms and seek prior approval from the insurer (at the time of policy issuance). This practice assists the insured in creating this predetermined list of defence counsels they can engage on a regular basis for any legal notices and related court proceedings.

In the above case, seeking prior approval from the insurer allowed the insured to attend to the incident on priority through the defence counsels and inform the insurer within a reasonable time regarding the claim and the counsel engaged for it.

However, as brokers, we educate the insured that despite having pre-listed law firms, if they wish to engage another law firm or a senior counsel outside the scope of the list shared with the insurer, they would be mandated to seek prior written consent from the insurer.

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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