



Liability Claims

T A K E A W A Y S

MAY, 2025

Welcome to the 52nd edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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1 Venture Capital Asset Protection Policy

Event Chronology

The insured, is a fund manager for an Indian fund ("Fund"), specialised in managing investments and providing strategic oversight. The Fund had made certain investments in an offshore company. The insured received a legal notice from the offshore company alleging that insured persons had played a role in one of the investee companies of the insured breaching their contract with the claimant. Due to disputes regarding the arrangement between the parties, the claimant filed a suit against the insured's Directors & Officers (D&O) and the insured company itself. This incident triggered a claim notification under the Venture Capital Asset Protection (VCAP) policy.



Key Intent of the Claims

Case Study

What is a Venture Capital Asset Protection Policy?

Venture capital firms and fund managers face unique risks associated with their investment activities and management responsibilities. A Venture Capital Asset Protection (VCAP) policy is a specialised cover that combines aspects of Directors & Officers (D&O) and Errors & Omissions insurance, and Commercial Crime insurance. It offers protection against a wide range of risks, including management liability, professional services liability, and defense costs arising from legal actions against the insured persons.

A VCAP policy may also include extensions such as Employment Practices Liability, Fiduciary Liability, and Cyber Liability, ensuring comprehensive protection for venture capital firms and their key individuals.

Scope of the Policy

Claim Against the Insured

It is common for fund managers to assume that any liability arising from their investment activities is automatically covered under their policy. However, insurance coverage is subject to specific terms and exclusions. In this case, although the insured managed the investments, the actual disputes arose from the arrangement with the offshore claimant.

The insurer further examined the investment agreement between the Fund and the offshore company, which included clauses outlining the terms of the arrangement — adding complexity to the claims scenario.

Highlight

A VCAP policy is an all-encompassing cover available to venture capital and private equity firms, and a well-structured policy eliminates the requirement for the insured to avail multiple covers and report claims across policies and insurers.

Prudent: The Part Well Played

We focused on demonstrating how the Directors & Officers (D&O) liability extension under the policy was directly triggered by the circumstances of the incident. We highlighted that, as per standard insurance practice, endorsements and policy extensions prevail over conflicting terms within the main body of the policy.

Importance of Structuring a Policy to Cover All Entities and Funds as Named Insured

1. **Ensuring Comprehensive Protection:** Including all entities and funds as named insured ensures that every aspect of the business is safeguarded. This means any claims against any part of the business will be covered, minimising the risk of uncovered liabilities.
2. **Preventing Coverage Gaps:** If an entity or fund is not listed as a named insured, it might not be protected in the event of a claim. This can lead to significant financial exposure and legal complications. By naming all entities and funds, you ensure that there are no gaps in coverage.
3. **Meeting Legal and Regulatory Requirements:** Many jurisdictions require that all entities involved in a business operation be insured. Ensuring that all entities and funds are named in the policy as 'insured' helps meet these legal and regulatory requirements, avoiding potential fines and penalties.



2 Comprehensive General Liability (CGL) Policy

Event Chronology

The insured is among the few specialised lean scaffolding manufacturing companies globally. They had supplied a wall/column formwork system to a client abroad. An incident occurred at one of the construction sites during the concreting of a column, where the panel failed to withstand the load and gave way, causing concrete spillage. The issue was promptly inspected by the insured's welding team stationed onsite. However, the repairs failed to resolve the issue, even after attempting multiple options to repair these columns. Consequently, a decision was made to recall the entire batch to India for in-house repair and subsequent re-dispatch to the customer.



Key Intent of the Claims

Case Study

What is a Comprehensive General Liability (CGL) Policy?

A Comprehensive General Liability policy is designed to protect the insured against third-party legal liabilities arising from business operations. This includes bodily injury, property damage, advertising injury, defence costs, and damage to tangible property caused by the company's operations or finished products, wherever their business operations are conducted.

For a manufacturing entity such as the insured, the CGL policy can be further extended to include covers like Product Guarantee, Product Liability, Financial Loss, and Product Recall—essential protections considering the nature of the business and associated risks.

Scope of the Policy

Claim Against the Insured

In the present case, the insured's policy specifically provided coverage for Product Recall and Financial Loss but excluded Product Guarantee. Ideally, the Product Guarantee cover would have been triggered in light of the discrepancy in the product's build quality. However, the policy also included an exclusion for product efficacy—excluding claims arising from the failure of the product to perform its intended function.

Highlight

Ascertaining covers that cater to the insured's risk appetite is extremely crucial. While ensuring that the recall extension covered costs for repairs and making the product marketable, we made sure that the insured did not have to go out of pocket and that the policy sufficiently addressed the loss suffered by the insured.

While the recall coverage was applicable due to the imminent risk of bodily injury or property damage, the inclusion of repair costs remained contentious, since as per the insurer, the core issue stemmed from product inefficacy rather than an imminent danger of damage or injury. We, therefore, represented to the insurer that the rationale to recall the product was due to the imminent threat of causing bodily injury and property damage, since the columns falling would directly harm the structure of the project and cause injuries and damage surrounding property.

The insurer was then aligned to consider the claim accordingly.

Prudent: The Part Well Played

While the insurer was initially inclined to settle the claim strictly excluding repair-related costs—we presented a detailed and reasoned argument to broaden the interpretation. We emphasised that recall coverage also encompasses redistribution costs of recalled or reconditioned products. Furthermore, expenses associated with repair, reconditioning, or treatment of such products to render them marketable were argued to fall within the scope of the recall clause.

We additionally assisted the insurer in recognising and accepting the costs related to product disposal (net of salvage value), as well as incremental warehousing or storage expenses incurred due to the recall. Throughout the representation, we maintained that the insured's actions did not constitute a legal admission of liability. Our structured and substantiated submission led to timely acknowledgment of coverage, enabling the smooth progression of the claim.



3 Tour Operator Liability Policy

Event Chronology

The insured, a travel services provider, specialised in curating holiday and customisable tour packages. In pursuit of expanding its reach and enhancing service offerings, the insured regularly partnered with local travel agencies across various countries. During one such engagement, the insured coordinated with an overseas travel partner to arrange a travel package for a family based in India. Unfortunately, the travellers were involved in an accident during the trip, resulting in physical injuries. This incident triggered a claim notification under the Tour Operator Liability Policy (TOLP).



Key Intent of the Claims Case Study

What is a Tour Operator Liability Policy?

Tour Operators are responsible for ensuring safe and seamless travel experiences for their clients. A Tour Operator Liability Policy is a specialised cover that combines aspects of Commercial Liability (CL) and Professional Indemnity (PI) policies. It offers protection against a wide range of risks, including bodily injury and property damage arising out of the professional services rendered by the tour operator.

Scope of the Policy

Claim Against the Insured

It is common practice for tour operators to believe that any liability arising in the course of their business activity is automatically covered under their policy. However, insurance coverage is subject to specific terms and exclusions. In this case, although the insured coordinated the tour, the actual transportation services were rendered by a contracted partner abroad.

The insurer further examined the standard booking form signed by the customers, which included a clause disowning liability for any damages during the trip — adding complexity to the claim scenario.

Prudent: The Part Well Played

Our team focused on demonstrating how the circumstances of the incident directly triggered the auto liability extension under the policy. We emphasised that while the base policy contained an exclusion for non-owned vehicles, the specific extension for hired or contracted vehicle liability clearly overrode this general

Highlight

A TOLP may also include extensions such as Non-Owned & Hired Auto Liability, Host Liquor Liability, Fire Legal Liability, among others, so that business of this nature can protect their liability comprehensively.

exclusion. We highlighted that, as per standard insurance practice, endorsements and policy extensions prevail over conflicting terms within the main body of the policy. This principle was critical in establishing that the incident, though involving a third-party vehicle, squarely fell within the scope of cover provided under the extended terms.

We also clarified that the standard disclaimers included in booking forms — which indicate limited liability for damages, signed by the customers, are precautionary and do not negate the insured's professional duties. Through this explanation, we demonstrated that the insured's conduct did not amount to a legal admission of liability. Our clear and well-substantiated representation led to prompt progress with an otherwise dormant claim.



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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