

Liability Claims *Takeaways*

OCTOBER, 2024

Welcome to the 46th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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1 Commercial Crime Insurance

Event Chronology

The insured is in the business of retail as well as corporate services. Their business relied on storing their assets at warehouses, operated by third party warehousing agencies. The insured employee while looking for a certain batch of their assets in their asset management system figured that those specific batches were appearing as being within the warehouse. In fact, upon physical inspection, the said batch of assets were not to be found. To be sure, they appointed a third-party verification agency to inspect and confirm the absence of the said batch. Upon the completion of the verification, it was found that not only was the said batch missing, but many assets were missing their internal components which would not be visible unless the specific asset was opened. In all, the insured discovered a loss of more than INR 10 crore.

The insured filed a police complaint of theft. The matter was notified under their Commercial Crime Insurance Policy.

Key Intent of the Claims Case Study

A commercial crime policy primarily covers inter alia

- Direct loss caused to insured due to fraudulent or dishonest acts of their employees
- Direct loss to insured due to specific criminal actions of third parties as specified in the insurance policy

In this case, among the criminal acts covered for third party crime, theft was also included.

Scope of the Policy

Modus operandi

Since the theft was perhaps committed at a time much before it was discovered, there was no external proof to establish the modus operandi. The insured being an experienced company in the sector of operation, was able to demonstrate the modus operandi based on the circumstantial evidence. However, the evidence for any external corroboration of the modus operandi of the perpetrators was yet to be seen.

Demonstration of crime

While the crime was committed way ahead in time before it was discovered, the insurer and the surveyor repeatedly enquired about how the crime itself was proven.

Police investigation and recovery

The insured had filed a complaint, and the police had registered a First Information Report (FIR). Though the investigation was ongoing, there was no progress in determining who the perpetrators might have been. The insured had accused the warehouse agency in their complaint, however there was no conclusive evidence to that effect and the final police report was also pending.



The effect of crime is the loss suffered by the insured. However, the crime itself is a different event.



Prudent: The Part Well Played

A crime policy is a discovery-based policy. As the insurance brokers on the policy, we were able to align all parties to the key ingredients of coverage in this instance namely, loss to insured due to external crime, theft of assets by an unknown person, proof of loss to insured. While it is valuable to be able to establish modus operandi, it cannot be made a condition precedent for consideration of a claim under Commercial Crime Insurance. Similarly, police may take longer to complete the investigation. Policy does provide for insurer to be subrogated once they pay a claim. Using these provisions, we were able to align all parties towards the settlement of claim along with subrogation such that insured is not required to wait indefinitely to recover their loss under insurance whilst insurer's right to the recovered items remains intact.

2 Commercial General Liability Insurance

Event Chronology

The insured was a leading manufacturer of metal parts used in cages across multiple businesses. They had supplied their products to their customers outside India. These parts were to be used at the site in connection with installation of solar panels by their customers. Upon being tested, customer discovered that these parts were unable to withstand electrical conduction and were not conducive for their purpose. Accordingly, the supplied parts were rejected. The customer also claimed the cost incurred for reinstalling the new parts because they had to dig fresh trenches, thereby damaging the land on which the panels were to be installed in the process. Insured notified this matter under their Commercial General Liability Insurance Policy (“CGL Policy”). Since the policy was placed through another intermediary, the insured approached us to assist with the claim.



Key Intent of the Claims Case Study

A CGL Policy is primarily aimed to indemnify an insured for any third-party claim of damages on account of bodily injury or property damage suffered by such third party, due to an accident at the insured’s premises or due to the insured’s product.

In this case, the lack of conductivity in the supplied parts was an accidental occurrence, which resulted in the customer having to suffer property damage and that was being claimed from the insured.

There are several different types of losses covered by the CGL insurance apart from the product damage.

Scope of Policy

While the customer in this case was restricting their claim to property damage suffered by them, usually in cases of rejection of goods, there are many other types of losses that come into play namely:

- Cost of replacement of goods
- Cost of recalling the rejected goods back to the insured premises
- Cost of rework, if possible
- Line stoppage loss if any suffered by the customer
- Financial losses suffered by the customer directly due to the defective goods supplied by the insured

These costs are not covered in the property damage section of a CGL policy. For this purposes, insurers offer additional covers in a CGL policy namely, product guarantee, product recall, and financial loss. In this case, these covers were not availed by the insured.



Prudent: The Part Well Played

Firstly, we took over the claim and assisted the insured in preparing their claim documents. We hand-held them in preparing the claim bill and arranging supporting documents to ensure complete cooperation with the insurer and surveyor.

Secondly, we advised the insured about adding the product liability covers in their CGL policy. We were able to demonstrate that without these covers in their line of business, they will remain highly exposed to risk and uninsured for majority of losses arising from product liability. Consequently, the insured agreed to avail these covers in their next renewal.

Event Chronology

The insured was a listed company, and on a Friday evening, had discovered that there was a ransomware introduced into their system, thereby locking a specific server that contained data exchanged with authorities. The threat actors had locked the server and left a note with email address where they could be contacted to proceed with ransom payment. The insured immediately notified this matter under their Cyber Insurance Policy (“Cyber Policy”).

Key Intent of the Claims Case Study

Cyber policy aims to indemnify an insured for various first party and third-party losses that arise directly due to a cyber event covered by the policy. The aim is to first determine how and why the event happened and assist the insured in mitigating further losses from the said incident.

Scope of the Policy

The insured had not experienced a cyber event before, and therefore did not have any experience of handling the situation. They also were not engaged with any forensics consultant, and neither were they being advised on the legal risks. There was also a risk of personal information having been accessed. However, further clarity was needed from the forensics analysis.

Prudent: The Part Well Played

At the time of policy being placed, we had worked with the insurer to embed specific forensics and breach consultants into the policy to avoid time being wasted in the event of a cyber-attack in future. Therefore, upon receiving information from the insured, we immediately approached the insurer and worked with them to bring the breach counsel on board. The breach counsel was then able to bring other consultants on board swiftly to assist the insured and provide a holistic advice on next steps. The forensics were completed immediately, and it was confirmed that no personal information was under threat. This allowed the insured to take care of other regulatory requirements simultaneously and claim the necessary costs under the policy.



The Cyber policy also pays for forensics investigations to determine the root cause, legal professionals for advisory, business interruption losses etc.

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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