

Liability Claims *Takeaways*

SEPTEMBER, 2024

Welcome to the 45th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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1 Carrier Legal Liability Insurance

Event Chronology

The insured is in the transportation business owning a fleet of vehicles. The insured is generally engaged by cargo owners for carrying goods via road across India. In this particular matter, the insured entered into a written agreement with a cargo owner for transporting their goods from Andhra Pradesh to Gujarat.

During a sharp turn, the insured's vehicle lost balance. This caused the vehicle to overturn, resulting in a fuel leak. The overturned vehicle caught fire, damaging the cargo inside. The insured notified the insurer of the incident under its Carrier Legal Liability Insurance Policy (CLL Policy).

Key Intent of the Claims Case Study

What is CLL Policy?

A CLL policy generally indemnifies an insured against, inter alia, their legal liability for an actual loss or damage to the goods being transported by the insured's vehicle under a written contract of carriage.



Scope of the Policy

Exclusion under the policy

CLL Policies, in general, have an exclusion for liability arising out of loss or damage due to the inherent defect or vice such as decay of perishable goods, spontaneous combustion, etc. In this case, once the claim was intimated under the CLL policy, the insurer's surveyor visited the site of the incident. In order to avoid any ambiguity at a later stage, it was clarified and noted by the surveyor that the fire was not on account of the goods since they were non-combustible in nature.

Claim against the insured

The cargo owner had sent a monetary claim letter to the insured immediately after the incident, which was replied to by the insured. However, subsequent to the reply, there was no communication from the cargo owner. The insurer sent multiple reminders to the insured seeking an update of whether the cargo owner was pursuing the claim against the insured, but there was no movement. The insurer wanted to close their files considering the lack of movement. However, it was decided that the claim would be kept open, till the limitation period for filing a suit against the insured, was not over. Later, a suit was filed by the cargo owner, and the CLL policy provided coverage.

The CLL policy does not cover any liability agreed under a contract or agreement unless such liability can be established under the Carriage by Road Act, 2007 read with its rules.



Prudent: The Part Well Played

We advised the insured to collate all documents and keep the CLL insurer well informed of the developments in the matter and assisted in demonstrating how the Insured would be liable under the Carriage by Road Act, 2007. While the cargo owner remained silent after the initial correspondence, we convinced the insurer to keep the file open till the limitation period for filing a suit against the insured transporter was not over. This allowed smooth claim processing at the time when the suit was finally filed by the cargo owner.

2 Commercial General Liability Policy

Event Chronology

The insured is a manufacturer of packaging material used by leading FMCG companies to pack their products. The insured was supplying sealable packaging material for a chips manufacturer. The insured sent a batch of 3.2 lakh sealable packets. The insured's client packed and supplied the first consignment of goods. Subsequently, one of the shops that received the goods reported that the packaged product contained pieces of plastic.

The insured's client had to recall all its products and alleged that the insured's product contaminated their goods. The insured received a demand notice to bear the cost of the client's product as well as their cost for recall. The insured notified the claim under its Comprehensive General Liability Policy (**CGL Policy**).



In case of an incident where the property which incorporates the insured's product is not damaged and the insured's product can be repaired/replaced, the impaired property exclusion will be applicable.

Key Intent of the Claims Case Study

What is a CGL Policy?

A CGL Policy provides coverage for legal liability arising from property damage or bodily injury due to an accident at the insured's premises or due to the insured's product and liability arising on insured on account of their product.

Scope of the Policy

Impaired Property Exclusion

The customer used the insured's product to pack their products (chips) and sell it to end users. The CGL policies have an exclusion clause concerning impaired property which was highlighted by the insurer during the claim discussion. As per the exclusion, any tangible property which cannot be used because a) it incorporates the insured's product, and b) which can be restored to use by repair/replacement of insured's product, is considered "impaired property" and is excluded from cover under the CGL policy.

Upon proper investigation, we were able to show that while preparing the packets, the machine had malfunctioned and caused small particles of plastic to enter the packets (insured's product). It was also clarified that since the size of the plastic particles was microscopical, it was not possible to repair the insured's product in the present case. Hence, the client's entire property was damaged due to insured's product.



Prudent: The Part Well Played

To assist the insureds, it is crucial to understand the cause of the incident and its effect. We were able to show the insurer that the product of the insured's client was contaminated in such a manner that it was unusable even if the insured's product was replaced. Further, we supported our argument with independent lab reports regarding the particle size and contamination. This assisted the insured and clarified to the insurer the nature of loss and coverage under the CGL policy.

3 Cyber Liability Insurance

Event Chronology

The insured is an MSME manufacturer in India that has been expanding its business across different states. The insured noticed that an amount of INR 75,00,000 had been transferred from its bank account to an unknown account. Upon inquiring with the bank, it was informed that the instructions originated from insured's system and the recipient account had already transferred the fund to multiple accounts.

The insured tried to trace the origin of the instruction to the bank, however, they could not find any instruction in their system containing the details of the recipient account. Considering the possibility of a third-party intrusion into the insured's system, the matter was notified under the Cyber Liability policy.

Key Intent of the Claims Case Study

What is Cyber Liability policy?

A Cyber Liability policy provides coverage to insureds against cyber-related incidents such as data theft, loss on account of data breach, business interruption loss due to cyber-attack, regulatory actions, fund transfer fraud etc. The policy also covers forensic costs, notification costs, and costs incurred for monitoring services, etc.

In some cases, even a commercial crime policy provides coverage for fraudulent acts related to computer or fund transfer fraud.

Scope of the Policy

Establishing breach of insured's system

Once the insured intimated the matter, the appointment of a forensic expert, was taken up on priority. Quotations were taken from the forensic experts for the scope of work as indicated by the insured and shared with the insurer for their consent. After the appointment of the forensic experts, their team started an examination of the insured's computer system to detect any intrusion by a third party. Based on the digital evidence, it was discovered that malicious software was present in the insured's system, which modified the transmission sent from the insured's system to the bank.

Fraudulent Fund Transfer Cover

Based on the forensic report, it was clearly established that the insured suffered a targeted intrusion in its system, due to which the bank was instructed to transfer funds to an unknown account. Such direct financial loss of the insured's fund on account of electronic instructions, maliciously modified by a third party were covered under an endorsement of fraudulent fund transfer.

The insured also had to prove that no authorised personnel were involved in the instructions, that were fraudulently sent to the bank.





Prudent: The Part Well Played

Our primary focus in the case was to ensure that the breach in the insured's system was contained and all reasonable measures were taken immediately to prevent any future loss. Discussion with the insurer for the consent of the forensic experts and with the bank for any possible recovery was initiated simultaneously with information being sent to the relevant authorities.

Based on the findings of the forensic experts, it was established that there was intrusion by a third party in the insured's system and it is on this account that instructions were issued to the bank with modified account details. Considering the nature of the insured's business and rising cyber incidents across the world, we had assisted the insured in obtaining an endorsement for a fraudulent fund transfer at the time of policy placement. The endorsement provided coverage in the present case that may have been lacking under the general provisions of cyber policy.

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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